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U.S. Department of Justice
Bureau of Justice Statistics

Privacy and Security of Criminal History Information

COMPENDIUM OF STATE LEGISLATION

1981 SUPPLEMENT

U.S. DEPARTMENT OF JUSTICE
BUREAU OF JUSTICE STATISTICS

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Report of work performed under BJS Grant No. 80BJ-CX-0007, awarded to SEARCH Group, Inc., 925 Secret River Drive, Sacramento, California 95831. Contents of this document do not necessarily reflect the views or policies of the Bureau of Justice Statistics or the U.S. Department of Justice.

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COMPENDIUM OF STATE LEGISLATION

1981 SUPPLEMENT

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PREFACE

In keeping with its legislative mandate, the Bureau of Justice Statistics, and its predecessor entity, the National Criminal Justice Information and Statistics Service, has long been concerned with the significant issues associated with criminal justice information policy.

In particular, BJS recognizes that criminal justice policies and procedures must reflect an appropriate balance between the privacy interests of the individual, the data needs of law enforcement, and the informational interests of the research and private sector communities. Such procedures must also be consistent with technological developments and must insure that appropriate levels of protection are provided to insure security and privacy of data. In these times of fiscal constraint, criminal justice information policy must also be responsive to increased needs for interjurisdictional data exchange in order to maximize cost effective utilization of available data resources.

Over the past five years, almost all states have enacted legislation addressing some aspect of criminal justice information policy. Such legislation establishes the framework for the development of individual state operating policies and is critical to the establishment of data exchange arrangements involving multiple jurisdictions.

Consideration of changing state legislation and analyses of the evolution of national legislative trends is thus significant at this time, in light of the continuing legislative interest in this area and the need to further the federal-state dialogue relating to criminal justice information policy.

This volume represents the fourth compendium to state privacy legislation issued by this office. It is anticipated that this document will serve as a valuable guide for those persons interested in reviewing both individual state legislation and overall trends in this critical area.

Benjamin H. Renshaw, III
Acting Director
Bureau of Justice Statistics

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FOREWORD

This document is the latest in a series of documents which compile and analyze state law and policy relating to privacy and security of criminal history record information. The series, begun in 1974-75, includes both (1) compilations of state laws and administrative regulations addressing criminal history record information, and (2) analyses of trends and issues reflected in that body of law and policy documents. The purpose of the series is to apprise legislators, planners, administrators, and other interested individuals of the rapid changes in this subject area over the past decade.

The first compendium of existing law[1] was issued by the Law Enforcement Assistance Administration (LEAA) in 1974 as part of its efforts in connection with the promulgation of regulations covering privacy and security of criminal history information.[2]

A second compendium[3] based on a subsequent survey was issued in January 1978 and documented the growth of state criminal justice privacy laws subsequent to the earlier survey. At that time, a companion document[4] was also published which analyzed policy issues in specific areas of privacy law and provided an overview of the significant changes in state laws that had occurred, largely as a result of the impact of the federal regulations.

A third compendium in the biannual series was released in January 1980 and catalogued state laws and regulations through mid-1979.[5]

The present volume is an update of those previous documents. It includes a current supplement of state laws and regulations as well as an analysis of trends and issues reflected in the material included in both the 1979 supplement and this new supplement. The legislative research was concluded in July 1981 and any enactments of privacy and security legislation by the states up to that date are included in this edition. The analysis includes discussions of trends and conclusions with reference to critical information policy issues such as the organizational placement of regulatory authority, review and challenge by record subjects, record quality requirements, limits on dissemination, and access to criminal records for research purposes.

The format and classification categories used in this edition are consistent and compatible with the 1978 and 1979 editions to aid research requiring the use of all three documents. Slight changes have been made, however, and these changes as well as recommendations on how best to use this supplement are discussed in the Introduction.

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[1]Compendium of State Laws Governing the Privacy and Security of Criminal Justice Information, 1974.

[2]28 CFR Part 20.

[3]Privacy and Security of Criminal History Information, Compendium of State Legislation, 1978.

[4]Privacy and Security of Criminal History Information, An Analysis of Privacy Issues, 1978.

[5]Privacy and Security of Criminal History Information, Compendium of State Legislation, 1979 Supplement, 1979.

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The privacy and confidentiality of personal information continues to be of public concern, as evidenced by the activities of the federal government and state legislatures during the past several years and as expressed in recent public-opinion polls. A comprehensive nationwide survey conducted by the Sentry Insurance Company in 1979 found that the American people are greatly concerned about personal privacy and the negative impact on their lives that may result from pervasive applications of computer technology and the trend toward more widespread collection and use of personal information. The survey reported that three out of four Americans now believe that the right to privacy should be akin to the inalienable American rights of life, liberty and the pursuit of happiness.

With respect to criminal justice information policy, the past decade has been one of considerable activity and progress at both the federal and state levels. Undoubtedly, the most significant development was the enactment of Section 524(b) of the Omnibus Crime Control and Safe Streets Act (now Section 818(b) of the Justice System Improvement Act of 1979), which provides for the security and privacy of criminal history record information collected, stored or disseminated with support made available under those acts. The Department of Justice issued regulations to implement Section 524(b)* imposing minimum general requirements for the maintenance, use and dissemination of criminal history record information, leaving the development of comprehensive programs and specific procedures to implement the regulations to the states.

The federal regulations were instrumental in stimulating many states to enact their own laws which would, at a minimum, comply with the requirements of the federal government. In addition, the regulations have triggered a reassessment of existing state privacy and security laws that has gone beyond mere compliance, as evidenced by the fact that many states have enacted comprehensive criminal history laws that greatly exceed the requirements of the regulations.

This supplement and the earlier compilations in the series are intended as reference documents for those working in the area of criminal justice information law and policy. The documents should be useful to legislators, legal analysts, researchers, planners, administrators, and others with an interest in this subject, in developing information policy or implementing information practices. By contrast and comparison of the various approaches reflected in different state laws and regulations, planners and administrators should be greatly assisted in developing effective and fair policies for their jurisdictions. By facilitating such comparisons and by furthering research in this area, these compilations hopefully will contribute to the evolution of enlightened information privacy policy.

Scope of the 1981 Supplement

This supplemental edition contains five sections. Section 1 sets out findings and trends based upon the cumulative statutes and regulations included in the 1978 Compendium, the 1979 Supplement and this volume.

Section 2 defines categories into which state laws have been classified and consists of graphic representations depicting developments in those categories of criminal justice information law and policy.

Section 3 includes an analysis of the statutes and regulations included in both this supplement and the 1979 Supplement (for which no analysis was published) and is intended to update the analysis set out in the volume published as a companion document to the 1978 Compendium. This section examines several critical issues in

*28 CFR, Part 20.

the area of criminal history record information policy. Issues examined include: (1) types of agencies given responsibility for the development and oversight of state criminal justice information policy; (2) the rights of record subjects to review their criminal history record and challenge information they deem inaccurate or incomplete; (3) criminal record dissemination policy; and (4) record quality and audit.

Section 4 reviews state implementation responses to the Federal Bureau of Justice Statistics (BJS) privacy and security regulations (28 CFR Part 20) as they impact access for research and statistical purposes.

Section 5 sets out the full text of state statutes and regulations with complete citations to the official state codes or other state compilations where they may be found. The compilation methodology included a survey of state officials concerned with criminal record programs and policy and extensive library research in state codes. (The survey compiled the laws of 53 jurisdictions: the 50 States, the District of Columbia, Puerto Rico and the Virgin Islands. Herein, all are referred to as "states.") Where survey responses included administrative regulations, they are included in this volume, although in some cases they were in existence before 1979 but were not included in the earlier editions. The statutory provisions set out in this supplement include both new laws and recent amendments to existing laws on security and privacy. In some cases where laws included in earlier editions have been extensively amended, the full text of the amended law has been included in this supplement. Although for this reason the material in this supplement duplicates some of the material in prior editions, the duplication was felt to be necessary to avoid confusion and to simplify use of the volume as a research tool.

In addition to the aforementioned sections, an appendix has been added which reviews the security and privacy legislation in six states which have enacted comprehensive statutes since the 1978 Compendium was issued.

How to Use the 1981 Supplement

Section 5 of the present volume is intended primarily as an updated supplement to the 1978 Compendium. When taken together with that compendium and the 1979 Supplement, the series comprises the most comprehensive existing collection of criminal justice privacy and security laws and regulations of the states. Since the volumes are cumulative, to review the complete text of all statutes and regulations controlling privacy policy for most states it will be necessary to consult more than one volume, and for many states all three volumes must be consulted. For this reason, changes in format have been kept to a minimum to insure compatibility of use among the three volumes. In addition, charts are provided indicating for each state which volumes must be consulted in order to accumulate all of that state's laws and regulations.

To facilitate use of the supplement, the laws and regulations have been classified into 28 substantive categories. These categories are defined at the beginning of Section 2. They include the identical 27 categories used in the earlier volumes plus the additional category "Central State Repository." The first set of tables (p. 13) lists citations to all state statutes and regulations under each of these 28 classification categories. For example, the table for the category "State Regulatory Authority" indicates whether a particular state has a provision establishing or designating an agency to promulgate statewide privacy and security policy and, if so, provides the legal citation to the provision to facilitate referencing the text in this volume or one of the earlier volumes. In addition to finding particular citations, the reader is able to quickly identify the concentration of states addressing a particular policy area.

Another view of state privacy trends is reflected in the Table on p. 11 entitled "Survey Comparison of Changes in State Statutes and Regulations by Classification Category." At a glance, the table indicates the degree of attention that a parti-

cular area of privacy policy has received in the states in the four years (1974, 1977, 1979 and 1981) in which surveys have been performed. Again, the table retains the classification categories utilized in the previous volumes for continuity of data analysis.

In the full text of Section 5, an individual table for each state is included to assist the user of this volume in accumulating all of the laws and regulations of particular states included in all three compendium volumes. The states are presented alphabetically and the table is found as the first page preceding the text of each state's statutes and regulations. The tables utilize the 28 classification categories referred to above and set out the citations to state laws and regulations in each category and an indication of whether the text of the provisions is included in this supplement or can be found in one of the previous volumes. If no entry appears under one or more classification categories for a particular state, it means that the state has no law or regulation addressing that policy area or that research has failed to detect any. A table is included for every state, although for a few states there is no following statutory or regulatory text, since those states have not enacted legislation since the 1979 Supplement was issued.

It should be pointed out again at this point that in some cases where state laws have been extensively amended since the 1979 Supplement, the entire text of the amended law is included in this volume even though some of the provisions are unchanged from the text in previous volumes. For this reason, the fact that a table indicates that a particular provision may be found in this supplement does not in every case mean that the provision was enacted since the 1979 Supplement.

Finally, it should be noted that the individual state tables presented in this supplement include new subdivisions of four classification categories. Category 3, "Regulation of Dissemination," has been subdivided to show whether the states permit or prohibit access by various types of groups or individuals (criminal justice agencies, non-criminal justice governmental agencies, and private individuals) to various types of information (conviction information, non-conviction information and arrest information). Category 4, "Right to Inspect," has been subdivided to show whether the states permit an individual to make notes concerning his criminal record or to obtain a copy of it. Category 14, "Accuracy and Completeness," has been subdivided to permit statutes to be classified as relating to disposition reporting, audit, or other accuracy and completeness requirements. Finally, Category 22, "Security," has been subdivided to enable statutes to be classified as relating to physical security, administrative security or computer security.

It is felt that these new classification sub-categories will present a more accurate and detailed view of state legislative and regulatory activity in these four important policy areas and will make the compendium a much more useful research tool. All state laws and regulations appearing in any of the volumes in the compendium series have been classified according to these new sub-categories. Thus, the individual state tables in this volume will enable the user to find laws and regulations under the new sub-categories in this Supplement as well as in the original Compendium and the 1979 Supplement.

Section 1

FINDINGS AND TRENDS

The following findings and trends reflect a review and analysis of the laws and regulations set out in Section 5 and in the 1979 Supplement. The laws were analyzed with reference to the 28 classification categories defined in Section 2.

Although the analysis focuses specifically on the substantive requirements of those laws, the conclusions were also influenced by two related factors. First, careful attention was paid to comprehensive state statutes. The scope and nature of comprehensive legislation are relevant factors in framing the overall security and privacy philosophy of a state. It is significant if a state addresses the multiplicity of policy issues systematically rather than treating various requirements on an individual or piecemeal basis. This is discussed further in the Appendix which examines in detail the laws of the six states which have enacted comprehensive laws since the 1978 Compendium was compiled.

Second, the level of state legislative activity over the last five years has been carefully weighed to permit an accurate portrayal of trends. Findings and trends become clearer when factors which have developed over an extended period of time are examined. Therefore, the analysis of the laws in the 1979 and 1981 Supplements was enhanced by considerations of legislative activity preceding the surveys.

Viewed from these perspectives, the laws and regulations set out in this volume support the following general findings:

1. All states have laws which address at least one aspect of security and privacy policy (see categories defined in Section 2). On an average, each state has addressed 14 of the categories.

2. Twenty-three states (43%) have developed and promulgated comprehensive security and privacy laws and policies. States are moving from a patchwork approach of policy development to a more systematic and comprehensive approach.

3. The states appear to exhibit a definite preference for broad legislation establishing a policy framework, leaving fine grained policy and procedure to regulations.

4. The Federal Regulations appear to have played a major role in stimulating the states to pass legislation and regulations governing not only the privacy and security of criminal histories but also the quality of state criminal justice information systems. The Regulations addressed five aspects of security and privacy policy: (1) individual access, (2) dissemination, (3) completeness and accuracy, (4) security, and (5) audits.

5. The bulk of law and policy was passed during 1976 and 1977. Tabulating the 1981 results (see the table on page 11) as a baseline of 100% of legislative activity for each category thus far, the laws passed effective 1977, on an average, represented 80% of the total activity while those passed by 1974 represented only 31% of the total. The enactment of legislation during the time period appears to correspond with the issuance of the Federal Regulations in 1976.

6. The states generally appear to begin with the presumption that criminal justice records are public, and then carve out exceptions to limit access. This approach is consistent with freedom of information laws and can help to avoid conflicts between criminal history rec-

ord laws and freedom of information acts, so long as each is drafted with an eye to the other.

7. The states frequently distinguish between original records (police blotters, dockets and chronological entries) and dossiers, which are compilations of information indexed by name or other identifiers. Even when non-conviction information in dossiers is restricted, the original records usually remain available, although in most cases it would be impractical to search for them. This seems to be a way for states to provide some privacy while not completely restricting records of historic facts.

8. The states generally accept the concept that restrictions should be placed on the release of non-conviction information. Although the Federal Regulations allow states to disseminate such information pursuant to law or rule, the states generally choose not to make non-conviction information available outside the criminal justice system.

9. There is some willingness on the part of the states to restrict dissemination of conviction data in narrow circumstances, such as first offenses, simple misdemeanors, or drug or alcohol related offenses, or if there has been an executive pardon.

10. Thirteen states (25%) have chosen to regulate the collection of investigative and intelligence data and nineteen states (36%) have regulated the dissemination of such data.

11. Forty-three states (81%) allow the record subject to inspect his criminal history, and 35 states (66%) specifically provide for amendment or correction of an inaccurate record pursuant to the record subject's request. While such provisions do not deal with the confidentiality of information, they are generally considered to be the heart of "privacy" rights, since they permit the record subject to know what information is recorded, and give him a role in monitoring the accuracy of these records.

12. Twenty-nine states (55%) require that transaction logs be maintained when criminal history information is disclosed to third parties. Most of these states require that corrected information be automatically forwarded to criminal justice agencies which have received erroneous or incomplete information, although most of the states do not provide for automatic notification to non-criminal justice agencies. The record subject, who is entitled to a copy of the transaction log in most cases, has the responsibility to communicate corrections to non-criminal justice recipients.

13. Forty-six states (87%) provide that a state regulatory authority shall provide general oversight of criminal history record management policy, and 21 states (40%) have established separate privacy and security councils.

14. Fifty-two states (98%) have established some sort of central state repository, although not all of them are fully operational statewide and only a few of them conform to the model contemplated by the Federal Regulations.

15. During the eight years covered by these surveys, the largest gain in record management regulation has been with respect to accuracy and completeness requirements. Now 49 states (92%) have such provisions, although only 14 dealt with this matter as of 1974, a 250% increase. Most states specifically address accuracy and completeness of records; some only require that criminal justice agencies establish procedures to encourage accuracy.

16. The category "Listing of Information Systems," reflects no growth between

1977 and 1981. None of the six states reviewed in detail later in the Appendix specifically require criminal justice agencies to provide public notice of criminal history record systems or to list the location and nature of their information systems. The legislatures appear to have viewed such a requirement as unnecessary because it is commonly known that criminal justice agencies keep criminal history records.

17. Thirty-two states (60%) have provisions dealing with information system security. Frequently such legislation is detailed in its requirements, probably reflecting the fact that the security requirements in the federal regulations are the most detailed provisions of the regulations.

18. Thirty-five states (66%) allow purging of non-conviction information (simple arrests without disposition or when the disposition is favorable to the accused). Twenty states (38%) provide for the sealing of such information. Twenty-four states (45%) allow purging of certain conviction information (relating, for example, to drug abuse, minor or first-and-only offenses after a reasonable time with a "clean" record). Twenty-two states (42%) provide for sealing of conviction information in some circumstances.

19. Remedies and penalties for failure to comply with laws or regulations for privacy and security may include civil or criminal sanctions, or both. This survey shows that 33 of the states (62%) provide civil remedies that may include punitive as well as compensatory damages, and sometimes the recovery of attorney fees. Civil penalties against agency personnel for violation or neglect of their duties may include job transfer, suspension or dismissal. Criminal penalties for willful transgressions, authorized by 39 states (74%), usually classify such conduct as a misdemeanor which could entail imposition of a fine or imprisonment.

20. The interstate exchange of criminal histories may impact on privacy protection. There is a lack of uniformity among the states regarding information disclosure policy even though there may be general agreement as to overall privacy policy. Although LEAA and the Bureau of Justice Statistics have stimulated and guided policy development, the federal regulations nevertheless leave much room for state variance. To the extent that the interchange of criminal history records between states is desirable, additional devices for uniformity and continuity are necessary. It should be noted that the development of a uniform criminal history privacy act, a project undertaken by the Conference of Commissioners on Uniform State Laws, may impact on this issue; however, the project is still far from completion.

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Section 2

CLASSIFICATION CATEGORIES AND SUMMARY TABLES

Classification Categories

Following are definitions of the categories into which state laws and regulations have been classified for both the individual and summary state tables. To assist the user of this volume, the 27 classification categories used in the previous volumes have been retained. Category 28, "Central State Repository," is a new category in this volume.

1. **State Regulatory Authority.**

   A grant of power to a state agency to promulgate statewide security and privacy regulations for criminal justice information systems.

2. **Privacy and Security Council.**

   A state board, committee, commission, or council whose primary statutory function is monitoring, evaluating, or supervising the confidentiality and security of criminal justice information.

3. **Regulation of Dissemination.**

   Restrictions on dissemination of criminal history information.

4. **Right to Inspect.**

   The right of an individual to examine his criminal history record.

5. **Right to Challenge.**

   The right to an administrative proceeding in which an individual may contest the accuracy or completeness of his criminal history record.

6. **Judicial Review of Challenged Information.**

   The right of an individual to appeal an adverse agency decision concerning challenged information to a state court.

7. **Purging: Non-Conviction Information.**

   The destruction or return to the individual of criminal justice information where no conviction has resulted from the event triggering the collection of the information.

8. **Purging: Conviction Information.**

   The destruction or return to an individual of criminal history information indicating a conviction.

9. **Sealing: Non-Conviction Information.**

   The removal of criminal history information from active files where no conviction has resulted from the event triggering the collection of the information.

10. **Sealing: Conviction Information.**

    The removal from active files of individual criminal history information indicating a conviction.

11. **Removal of Disqualifications.**

    The restoration of rights and privileges such as public employment to persons who have had criminal history records purged or sealed.

12. **Right to State Non-Existence of a Record.**

The right to indicate in response to public or private inquiries the absence of criminal history in cases of arrest not leading to conviction or where an arrest or conviction record has been purged.

13. **Research Access.**

The provision for and regulation of access to criminal justice information by outside researchers.

14. **Accuracy and Completeness.**

A requirement that agencies institute procedures to insure reasonably complete and accurate criminal history information, including the setting of deadlines for the reporting of prosecutorial and court dispositions.

15. **Dedication.**

The requirement that computer configurations be assigned exclusively to the criminal justice function.

16. **Civil Remedies.**

Statutory actions for damages or other relief resulting from violations of privacy and security laws.

17. **Criminal Penalties.**

Criminal sanctions for violations of privacy and security laws.

18. **Public Records.**

Requirements that official records maintained by public officials be open to the public.

19. **Separation of Files.**

Requirements that criminal history information be stored separate from investigative and intelligence information.

20. **Regulation of Intelligence Collection.**

Restrictions on the kind of intelligence information which may be collected and retained and/or prohibition on its storage in computerized systems.

21. **Regulation of Intelligence Dissemination.**

Restrictions on dissemination of intelligence information.

22. **Security.**

Requirements that criminal justice agencies institute procedures to protect their information systems from unauthorized disclosure, sabotage, and accidents.

23. **Transaction Logs.**

Records which must be maintained by criminal justice agencies indicating when and to whom criminal justice information is disseminated.

24. **Training of Employees.**

Security and privacy instruction which must be provided to employees handling criminal justice information.

25. **Listing of Information Systems.**

A mandatory disclosure of the existence of all criminal justice information systems describing the information contained in such systems.

26. Freedom of Information (Including Criminal Justice Information).

Provisions for public access to government records that apply to criminal justice records.

27. Freedom of Information (Excluding Criminal Justice Information).

Provisions for public access to government records from which criminal justice records are specifically excluded.

28. Central State Repository.

Establishment of a bureau, agency or other entity to collect and maintain criminal history records or criminal identification data for all criminal justice agencies in the state.

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SUMMARY TABLES

Survey Comparison of Changes in State Statutes/Regulations by Classification Category

The table on the following page graphically depicts comparative results of legislative survey findings for the years 1974, 1977, 1979, and 1981. The reader should note, however, that each survey year is cumulatively included in the results of the succeeding survey, with the sum of the legislative activity reflected in the current survey year. In some categories (for example, "Regulation of Intelligence Dissemination," and "Training of Employees") the cumulative number of state provisions for 1981 is less than the numbers shown for previous years. This reflects in most cases a more stringent review and classification of state laws in the 1981 survey rather than the repeal of laws by the states. For example, in counting the number of laws that regulate the dissemination of intelligence data, only laws specifically directed at such data have been counted in the 1981 survey. In previous years some state public record statutes have been counted in this category because they could be construed as broad enough to cover this type of data. Similarly, only laws specifically providing for training of personnel in some aspect of privacy and security have been counted under the "Training" category. Previously, some broad police training provisions not specifically directed at privacy and security were counted.

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SURVEY COMPARISON OF CHANGES IN STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

ITEM	1974	1977	1979	1981
1. State Regulatory Authority	7	38	42	46
2. Privacy and Security Council	2	10	13	22
3. Regulation of Dissemination	24	40	44	51
4. Right to Inspect	12	40	43	42
5. Right to Challenge	10	30	36	36
6. Judicial Review of Challenged Information	10	20	22	17
7. Purging Non-Conviction Information	20	23	28	35
8. Purging Conviction Information	7	13	19	24
9. Sealing Non-Conviction Information	8	15	16	20
10. Sealing Conviction Information	7	20	21	22
11. Removal of Disqualifications	6	22	22	27
12. Right to State Non-Existence of a Record	6	13	17	22
13. Research Access	6	12	14	21
14. Accuracy and Completeness	14	41	45	49

ITEM	1974	1977	1979	1981
15. Dedication	2	3	3	2
16. Civil Remedies	6	22	25	33
17. Criminal Penalties	18	35	39	39
18. Public Records	9	43	42	53
19. Separation of Files	5	10	10	6
20. Regulation of Intelligence Collection	3	10	10	12
21. Regulation of Intelligence Dissemination	7	24	25	18
22. Security	12	26	31	32
23. Transaction Logs	6	11	27	28
24. Training of Employees	4	18	23	15
25. Listing of Information Systems	1	8	8	7
26. F.O.I. Including CJ	**	**	18	27
27. F.O.I. Excluding CJ	**	**	19	22
28. Central State Repository	**	**	**	51

*The figures presented are cumulative and may include statutes or regulations previously enacted but excluded from prior surveys.

**DATA UNAVAILABLE FOR THESE YEARS.

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Summary of State Statutes/Regulations by Classification Category

The tables on the following pages, entitled "Summary of State Statutes/ Regulations by Classification Category," contain detailed matrixes summarizing state statutes and regulations through July 1981. For easy reference, the table for each classification category has been organized alphabetically by state, and the matrix references are keyed to section numbers of the state codes.

To locate the text of the legislative provisions cited in these tables, the individual state tables preceding each state's collection of laws in Section 5 should be consulted. Those tables will refer the researcher to the appropriate edition of the Compendium which contains the text of the pertinent state legislation.

These summary tables, and all other tables in this volume, reflect the laws of 53 jurisdictions: the 50 states and the District of Columbia, Puerto Rico and the Virgin Islands. For ease of reference, all 53 jurisdictions are referred to throughout this volume as "states."

The citations are to official compilations of state laws. Only title and section numbers are set out in these summary tables. For the full titles of the compilations to which the citations refer, reference should be made to the individual state tables in Section 5.

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SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

I. State Regulatory Authority

AL	41-9-591; 41-9-594
AK	12.62.010
AZ	41-2203(3); 41-1750
AR	5-1101; 5-1103
CA	Penal Code 11077
CO	24-32-401; 24-72-301
CT	54-142j
DE	11-8501; 11-8607
DC	
FL	943.05; 943.06
GA	92A-3002, 92A-3003, 92A-3005
HI	846-2.5
ID	19-4812
IL	38-206-2; 127-55(a)
IN	4-23-4-1; 4-23-4-4; 10-1-2.5-1
IA	749.1; 692.10
KS	22-4704
KY	17.147; 17-150(b)
LA	15:578; 15:578.1
ME	25-1541
MD	27-746
MA	6-168
MI	4.461, 462
MN	299C.06
MS	E.O. 201
MO	E.O. 5/5/75; Regs 1.1.1, 1.1.2
MT	44-5-103
NB	29-3516
NV	216.185; 179A.080
NH	106-B:14
NJ	E.O.; 53:1-12
NM	29-3-1
NY	Ex Law 835, 836
NC	114-10.1.C; 114-12-15
ND	12-60-17
OH	109.57
OK	
OR	E.O. 75-23; 181.555
PA	18-9161
PR	Act #129, Sect. 1, 4(c)
RI	
SC	23-3-130
SD	
TN	E.O. 9
TX	TCS Art. 4413 (21)
UT	77-26-6
VT	20-2051
VI	
VA	9-109(1); 9-111.4
WA	10.97.090
WV	15-2-25
WI	
WY	9-136.19; 22.31

Full titles of state code compilations are set out in individual state tables in Section 2.

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SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

2. Privacy and Security Council

AL	41-9-594
AK	
AZ	
AR	5-1103
CA	
CO	
CT	
DE	11-8602
DC	
FL	943.06 - 943.08
GA	92A-3005
HI	846-2.5
ID	
IL	
IN	
IA	692-19
KS	22-4704
KY	15:578; 15:578.1
LA	
ME	
MD	27-746
MA	6-170
MI	
MN	15.169
MS	E.O. 201
MO	Regs 1.1.1
MT	
NB	
NV	179A.080
NH	Regs Sect. 7.C, 7.D
NJ	E.O.
NM	
NY	
NC	
ND	
OH	
OK	
OR	E.O. 75-23, (10,11)
PA	
PR	Act 129, Sect. 4(i),8; Regs Sect. 3
RI	
SC	
SD	
TN	
TX	
UT	
VT	E.O. 31
VI	
VA	9-109
WA	
WV	
WI	
WY	

Full titles of state code compilations are set out in individual state tables in Section 2.

SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

3. Regulation of Dissemination

AL	41-9-621; 41-9-622; 41-9-642; Reg. 003
AK	12.62.030, Reg. 6AAC 60.070
AZ	13-1273; 41-1750; Reg. 13-1-01; 13-1-05; 13-1-06
AR	5-1102
CA	Penal Code Sect. 11105; 13300
CO	24-72-305
CT	54-142k,n
DE	11-8511; 11-8518
DC	Duncan Ordinance, Sect. 2, 3
FL	943.053
GA	92A-3003, Reg. 140-2.01
HI	846-9
ID	19-4812
IL	38-206-7; 38-1003-5-1
IN	10-1-1-13; 5-14-1-3
IA	692.2
KS	Reg. 10-12-2; 22-4704; 22-4712
KY	17.150
LA	15:578.12; 4:1, 44:3(4); Reg. 17-3:6
ME	16-612; 16-613; 16-615; 25-1631:
MD	27-749; Reg. 12.06.08.10
MA	6.172; Reg. 2.16-2.24
MI	4.462; 4.1801(3)
MN	15.1641; 364.04; Reg. III, V; 299C.13; 15.1621
MS	
MO	Reg. 3.2.1
MT	44-5-301, 302, 303; 44-5-214
NB	29.3523; Reg. 3, 7; 29-3520; 29-210
NV	179A.100
NH	106-B:14; Reg. Sect. 3.B, 3.C
NJ	53:1-16; 53:1-17
NM	28-2-3; 29-10-5; 29-10-7B
NY	Corr Law 752; CPL 160.30
NC	114.10.1; 114-19
ND	12-60-15
OH	109.57(A); 109.57(D)
OK	74-150.9
OR	181.555; 181.540; E.O. 75.23; Reg. 257-10-020, 025
PA	18-9121; 18-9124; 18-9125
PR	Act 129, Sect. 4; Reg. Sect. 8(a), (c)
RI	12-1-4
SC	23-3-130; Reg. 73-23; 23-3-140
SD	23-5-2; 23-6-9, Reg. 2:02:03:06
TN	10-7-507
TX	TRCS Art. 6252-17a; TCS Art. 4413(14)
UT	77-26-16; 17-18-2
VT	20-2053
VI	
VA	19.2-389; Reg. 4.0
WA	10.97.050; Reg. 365-50-290 to 365-50-550
WV	15-2-24
WI	165.83(j)
WY	9-2-568

Full titles of state code compilations are set out in individual state tables in Section 2.

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SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

4. Right to Inspect

AL	41-9-621; 41-9-643
AK	12.62.030; Reg. 6AAC, 60.080(5)
AZ	41-1750(9)
AR	5-1102; Reg. 3
CA	Penal Code Sect. 11121
CO	24-72-301; 24-72-303; 24-72-306
CT	54-142c
DE	11-8511; Reg. 1.4
DC	Duncan Ordinance Sect. 3,4,5
FL	Reg. 11C-8; 943.053
GA	92A-3006; Reg. 140-2.10
HI	Reg. 2,3; 846-14
ID	19-4812
IL	38-206-7
IN	4-1-6-3
IA	692.5
KS	22-4709
KY	17.150; 61.874; 61.884
LA	Reg. 17-3:3; 15:578:13
ME	16.620.1
MD	27-751; 76A-3; Reg. 12.06.08.07
MA	6-175; Reg. 3-1-3.7
MI	4.1801(3)
MN	15.165; Reg. VI
MS	
MO	Reg. 6.1.1
MT	44-5-214
NB	29.3520; 29.3525; Reg. 1
NV	179A.150
NH	Reg. 3; B-9
NJ	
NM	29-10-8
NY	
NC	Reg. .0808
ND	
OH	149.43
OK	
OR	181.555; E.O. 75-23; Reg. 257-10-035
PA	18-9151; 18-9152; Reg. 195.4
PR	Act 129, Sect. 4(m); Reg. Sect. 9(a)
RI	38-2-3
SC	Reg. 73-24
SD	23-6-11; Reg. 2:02:03:01
TN	Reg.
TX	
UT	77-26-16(17); 63-2-85.4(5)
VT	1-318
VI	
VA	9-111.11; Reg. 5.0
WA	10.97.080; 43.43.730; Reg. 365-50-070
WV	
WI	
WY	

Full titles of state code compilations are set out in individual state tables in Section 2.

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SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

5. Right to Challenge

AL	41-9-645
AK	12.62.030; Reg. 6AAC, 60.080(5)
AZ	
AR	5-1102; Reg. 4,5
CA	Penal Code 11126
CO	24-72-307
CT	54-142(1)
DE	Reg. 1.5
DC	
FL	Reg. 11C-8; 943.056
GA	92A-3006; Reg. 140-1.06
HI	Reg. 2,3,4; 846-14
ID	
IL	38-206-7
IN	4-1-6-5
IA	692.5
KS	22-4709
KY	

LA	Reg. 17-3:4; 15:578.13
ME	16.620.2
MD	27-752; Reg. 12.06.08.07
MA	6-175; Reg. 3.8-3.12
MI	
MN	15.165; Reg. VI
MS	
MO	Reg. 6.2.1
MT	44-5-215
NB	29.3525; 29.3526; Reg. 1,7
NV	179A.150
NH	Reg. Sect. 7
NJ	
NM	29-10-8
NY	
NC	Reg. .0808
ND	
OH	

OK	
OR	181.555; E.O. 75-23; Reg. 257-10-035
PA	18-9151; 18-9152; Reg. 195.5
PR	Act 129, Sect. 4,15; Reg. Sect. 9(b)
RI	
SC	Reg. 73-24
SD	Reg. 2:02:03:02
TN	Reg.
TX	
UT	77-26-16(7); 63-2-85.4(6)
VT	
VI	
VA	9-111.11; Reg. 6.0-11.0
WA	10.97.080; Reg. 365-50-210; 43.43.730
WV	
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Full titles of state code compilations are set out in individual state tables in Section 2.

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SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

6. Judicial Review of Challenged Information

AL	41-9-645
AK	12.62.030
AZ	
AR	
CA	Penal Code 11126
CO	24-72-307
CT	
DE	
DC	
FL	
GA	92A-3006
HI	
ID	
IL	
IN	
IA	692.5
KS	
KY	17.150(5)

LA	Reg. 17-3:4
ME	16.620.4
MD	27-753
MA	6-176
MI	
MN	15.165; 15.0424
MS	
MO	
MT	
NB	
NV	
NH	
NJ	
NM	29-10-8
NY	
NC	
ND	
OH	

OK	
OR	181.555; Reg. 257-10-035, 050
PA	18-9152(e)
PR	Act 129, Sect. 16
RI	
SC	
SD	
TN	
TX	
UT	
VT	
VI	
VA	9-111.11
WA	43.43.730
WV	
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Full titles of state code compilations are set out in individual state tables in Section 2.

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SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

7. Purging: Non-Conviction Information

AL	41-9-625
AK	12.62.040; Reg. 6AAC, 60.100
AZ	
AR	5-1109
CA	Reg. of Dept. Justice
CO	
CT	54-142a
DE	
DC	
FL	943.058
GA	
HI	831-3.2; 853-1
ID	19-4813
IL	38-206-5; 127-55(a)
IN	35-4-8-1
IA	692.16; 692.17
KS	
KY	
LA	44:9; 15:578.11
ME	
MD	27-736; 27-737
MA	Reg. 1.21(b)
MI	4.463
MN	152.18; 299C.11
MS	
MO	610.100
MT	44-5-212
NB	
NV	179A.160
NH	Reg. 3D
NJ	
NM	30-31-28
NY	Crim. Proc. 160.50
NC	15-224
ND	
OH	2951.04.1
OK	74-150.7; 22-991C
OR	181.555(3); Reg. 257-10-020
PA	18-9122
PR	
RI	12-1-12
SC	17-1-40; Reg. 73.21
SD	
TN	40-2109; 40-4001; 40-4002
TX	Crim. Proc. Art. 55.01
UT	77-26-16(4); 77-18-2
VT	
VI	
VA	9-111.9; Reg. 13.0-13.4; 19.2-392.2
WA	10.97.060
WV	15-2-24(H)
WI	
WY	

Full titles of state code compilations are set out in individual state tables in Section 2.

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SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

8. Purging: Conviction Information

AL	
AK	12.62.040
AZ	8-247
AR	
CA	Reg. Dept. Justice
CO	24-72-308(8)
CT	54-142a
DE	
DC	
FL	943.058
GA	
HI	
ID	
IL	
IN	
IA	
KS	21-4619
KY	
LA	15:578.11
ME	
MD	27-292
MA	Reg. 1.21(b)
MI	
MN	364.04; 152.18
MS	
MO	
MT	44-5-212
NB	
NV	
NH	Reg. 3D
NJ	
NM	
NY	160.55 CPL
NC	90-96; 15-223
ND	
OH	2151.35.8; 2953.32
OK	74-150.7; 11-794; 63-2-410
OR	181.555(3); Reg. 257-10-020
PA	18-9122
PR	Act 129, Sect. 8
RI	12-1-13
SC	Reg. 73.21
SD	
TN	
TX	
UT	77-18-2
VT	
VI	
VA	9-111.9; Reg. 13.0-13.4
WA	
WV	
WI	
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Full titles of state code compilations are set out in individual state tables in Section 2.

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SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

9. Sealing: Non-Conviction Information

AL	
AK	Reg. 6AAC, 60.100
AZ	13-4051
AR	
CA	851.8, 1203.45 Penal Code
CO	24-72-308
CT	54-142a
DE	
DC	
FL	943.058
GA	
HI	831-3.2
ID	
IL	
IN	
IA	
KS	
KY	17.142
LA	
ME	
MD	
MA	276-100B; 276-100C; Reg. 1.17-1.18, 1.21(a)
MI	
MN	299C.11; 152.18
MS	
MO	610.100
MT	44-5-202(8)
NB	
NV	179.255; 179.275
NH	
NJ	2C:52-6
NM	30-31-28
NY	160.50 CPL; 170.56 CPL
NC	
ND	12-53-18
OH	
OK	
OR	
PA	
PR	
RI	
SC	Reg. 73.21
SD	39-17-114
TN	
TX	
UT	
VT	
VI	
VA	9-111.9; Reg. 13.0-13.4
WA	
WV	
WI	
WY	

Full titles of state code compilations are set out in individual state tables in Section 2.

BEST DOCUMENT AVAILABLE

SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

10. Sealing: Conviction Information

AL	
AK	Reg. 6AAC, 60.100
AZ	13-907
AR	43-1231
CA	Penal Code Sect. 1203.45
CO	24-72-308
CT	54-142a
DE	
DC	
FL	943.058
GA	24A-3504
HI	712-1256; 831-3.1
ID	
IL	
IN	
IA	
KS	
KY	

LA	
ME	
MD	
MA	94C-34; 276-100A; 276-100B
MI	14.15(7411)
MN	364.04; 638.02; 242.31
MS	
MO	
MT	
NB	
NV	179.255; 179.275; 453.336.5
NH	651:5
NJ	2C:52-2 through 5
NM	
NY	160.50 CPL; 160.55 CPL
NC	
ND	
OH	2951.35.8

OK	
OR	137.225
PA	
PR	
RI	
SC	Reg. 73.21
SD	
TN	
TX	Fam. Code Sect. 51.16
UT	77-18-2
VT	
VI	
VA	9-111.9, Reg. 13.0-13.4
WA	
WV	
WI	
WY	

Full titles of state code compilations are set out in individual state tables in Section 2.

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SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

11. Removal of Disqualifications

AL	
AK	
AZ	13-905 through 13-912
AR	43-1231; 43-1233
CA	Penal Code Sect. 1203.45
CO	24-72-308
CT	
DE	
DC	
FL	893.14; 943.058
GA	24A-3504
HI	712-1255; 853-1
ID	19-2604
IL	
IN	
IA	
KS	21-4619; 22-3722
KY	
LA	44-9
ME	
MD	27-292
MA	276-100A; 276-100C
MI	14.15 (7411)
MN	364.03; 152.18; 242.31
MS	
MO	195.290
MT	
NB	
NV	453.336.8
NH	651:5
NJ	2C:52-27
NM	30-31-28
NY	CPL 160.60; 170.56 CPL
NC	90-96; 15-223; 15-224
ND	12-53-18
OH	2953.33; 2151.35.8; 2951.04.1
OK	63-2-410
OR	137.225
PA	
PR	
RI	12-1-13
SC	
SD	39-17-114
TN	
TX	
UT	
VT	
VI	
VA	
WA	
WV	
WI	
WY	

Full titles of state code compilations are set out in individual state tables in Section 2.

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SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

12. Right to State Non-Existence of a Record

AL	
AK	
AZ	
AR	
CA	432.7 Labor Code
CO	24-72-308
CT	54-142a
DE	
DC	
FL	893.14; 943.058
GA	24A-3504
HI	712-1256; 831-3.2
ID	
IL	
IN	
IA	
KS	22-4712
KY	

LA	
ME	
MD	27-292; 27-740
MA	94C-34; 276-100A; 276-100C
MI	
MN	152.18
MS	
MO	610.100
MT	
NB	
NV	
NH	651:5
NJ	2C:52-27
NM	30-31-28
NY	160.60 CPL
NC	90-96; 15-223; 15-224
ND	
OH	2953.33

OK	63-2-410
OR	137.225
PA	
PR	
RI	
SC	
SD	
TN	
TX	Crim. Proc. Art. 55.03; Fam. Code Sect. 51.16(h)
UT	77-18-2
VT	
VI	
VA	19.2-392.4
WA	
WV	
WI	
WY	

Full titles of state code compilations are set out in individual state tables in Section 2.

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SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

13. Research Access

AL	
AK	12.62.030(c); Reg. 6AAC 60.090
AZ	
AR	
CA	11105; 11144; 13202; 13205 P.C.
CO	
CT	54-142m
DE	
DC	
FL	943.057
GA	
HI	846-9(4)
ID	
IL	
IN	
IA	692.4
KS	
KY	

LA	
ME	16.613.4
MD	27-745; 43B-22; Reg. 12.06.08.10
MA	6-173
MI	
MN	15.1621 Reg. VB
MS	
MO	
MT	44-5-304
NB	
NV	179A.100; 179A.090.5
NH	Reg. Sect. 3.B.7
NJ	
NM	29-10-6.B
NY	
NC	114-10.1; Reg. 0202
ND	
OH	

OK	
OR	E.O. 75-23, (3,6); Reg. 257-10-030
PA	
PR	Reg. Sect. 8(c)(3)
RI	
SC	
SD	
TN	
TX	
UT	77-26-16(2)(e)
VT	
VI	
VA	19.2-389
WA	10.97.050(6); Reg. WAC 446-20-190
WV	
WI	
WY	

Full titles of state code compilations are set out in individual state tables in Section 2.

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SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

14. Accuracy and Completeness

AL	41-9-622; 41-9-634; 41-9-648
AK	12.62.040(2); Reg. 6AAC 60.020
AZ	Reg. 13-1-02; 41-2205; 41-1751
AR	5-1107; 5-1112
CA	PC. Sect. 11079, 11115, 11116, 11126, 13150, 13151, 13152
CO	24-32-412(3); 24-72-307
CT	29-11; 54-142h(a),(b),(c); 54-142j
DE	11-8503; 11-8504; 11-8505; 11-8506
DC	4-134a(b)
FL	943.052; 943.055; 943.056; Reg. 11C-4
GA	92A-302; 92A-2501; 92A-3003; 92A-3004; Reg. 140-2.03
HI	846-3,4,5,6,13
ID	19-4812; 19-4813
IL	38-206-2; 38-206-2.1; 38-206-5
IN	4-1-6-2; 4-1-6-5; 10-1-1-15; 10-1-1-18
IA	749.4; 692.5; 692.13; 692.15; 692.21
KS	21-2501; Reg. 10-10-2,3,4; 22-4704(c)(6); 22-4705(c)
KY	17.110; 17.147; 17.150
LA	15:578.3; 15:579; 15:579.1; 15:579.3
ME	16.613.4; 25-1542.4; 25-1544
MD	27-747; 27-748; Reg. 12.06.08.09,10,12
MA	6-171; 6-175; 66A-2; 127-23; 127-27
MI	4.463
MN	299C.06; 299C.09; 299C.10; 299C.17; 15.1641; Reg. IC, II
MS	
MO	57.103; 57.105; Reg. 2.1.2, 2.1.3, 2.3.2, 2.3.1, 2.3.2, 4.2.1., 4.2.2
MT	44-5-202; 44-5-213; 44-5-215
NB	29.3515; 29.3516; 29.3517; Reg. 2; 29-3526
NV	216.235; 216.235.8; 179A.080; 179A.090
NH	106B:14; Reg. Sect. 4,5
NJ	53:1-13,14,15,18,20.2
NM	29.3.1; 29.38
NY	Crim. Proc. 160.20; Ex Law, 837-6
NC	
ND	12-60-10; 12-60-11; 12-60-13
OH	109.57(A); 109.61; 1347.05
OK	74-150.10; 74-150.12
OR	181.511; 181.521; E.O. 75-23; 181-555 Reg. 257-10-020,030,040; 181-530
PA	18-9111; 18-9112; 18-9113; 18-9114; 18-9141; 18-9161; Reg. 195.2
PR	Act 129, Sect. 1,8,12d; Reg. Sect. 6,7,10
RI	12-1-7; 12-1-8; 12-1-10; 12-1-11
SC	23-3-120; 23-3-130; 23-1-90; 23-3-40; Reg. 73-22; 73-30
SD	23-5-4; 23-5-8; 23-6-16; Reg. 2:02:02:01; 2:02:04:01
TN	38-503
TX	
UT	77-26-5,8,9,10,11
VT	20-2054; 20-2053(b)
VI	
VA	9.111.5; 9-111.10; Reg. 3.0, 12.0, 19.2-390, 19.2-389.D
WA	10.97.040; 10.97.045; 10.97.090.3 43.43.740
WV	15-2-24(f)(g)
WI	165.83 165.84
WY	9-2-566

Full titles of state code compilations are set out in individual state tables in Section 2.

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SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

15. Dedication

AL	
AK	12.62.040
AZ	
AR	
CA	
CO	
CT	
DE	
DC	
FL	
GA	92A-3003
HI	
ID	
IL	
IN	
IA	
KS	
KY	

LA	
ME	
MD	
MA	
MI	
MN	
MS	
MO	
MT	
NB	
NV	
NH	
NJ	
NM	
NY	
NC	
ND	
OH	

OK	
OR	
PA	
PR	
RI	
SC	
SD	
TN	
TX	
UT	
VT	
VI	
VA	
WA	
WV	
WI	
WY	

Full titles of state code compilations are set out in individual state tables in Section 2.

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SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

16. Civil Remedies

AL	
AK	12.62.060
AZ	39-121.02; 13-4051.C
AR	12-2806
CA	
CO	30-10-101; 24-72-305
CT	4-197
DE	29-10005; 11-8520; 11-8521
DC	1-1527
FL	119.02
GA	92A-3007
HI	
ID	
IL	
IN	
IA	68A.5; 692.6
KS	22-4707
KY	61.882; 17.157
LA	15:579.5
ME	25-1550
MD	76A-5; Reg. 12.06.08.10N
MA	6-177; Reg. 3.22
MI	4.446
MN	15.166; 15.167; 299C.21
MS	
MO	Reg. 1.4.3
MT	44-2-205
NB	84-712.03; 84-712.07; 29-3528; Reg. No. 7
NV	
NH	
NJ	47:1A-4; 53:1-20
NM	
NY	Corr Law 755
NC	
ND	
OH	149.99; 1347.10
OK	
OR	192.490; Reg. 257-10-040
PA	18-9181; 18-9183
PR	
RI	12-1-12
SC	30-4-100; 23-1-90
SD	Reg. 2:02:04:03
TN	
TX	
UT	63-2-88
VT	1-319; 1-320; 20-2054(b)
VI	
VA	9-111.12; 2.1-346.1
WA	10.97.110; 42.17.390
WV	
WI	
WY	

Full titles of state code compilations are set out in individual state tables in Section 2.

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SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

17. Criminal Penalties

AL	36-12-42; 41-9-600
AK	12.62.060(b)
AZ	41-1750.D
AR	5-1110; 5-1111; 12-2807; 43-1235
CA	G.C. 6251; P.C. 11141; 13302
CO	24-72-309
CT	29-17; 54-142k(e)
DE	11-8520; 11-8521
DC	
FL	119.10; 119.02
GA	92A-9939
HI	28-46; 846-16
ID	
IL	38-206-7
IN	5-2-4-7; 35-4-8-4
IA	692.5; 692.7; 692.9; 68A.6
KS	22-4700; 22-4707
KY	17.157
LA	15:579.5; 44:9.D
ME	16-619
MD	27-739; 43B-22; 76A-5;
MA	6-178
MI	4.446; 28.760
MN	15.167
MS	25.53.59
MO	109.180; 601.115
MT	
NB	29.3527; Reg. 3
NV	179A.170; 239.010
NH	106B:14; 651:5
NJ	2C:52-30; 53:1-20
NM	14-2-3
NY	
NC	
ND	
OH	1347.99; 2953.35
OK	
OR	
PA	
PR	Act 129, Sect. 20
RI	
SC	23-1-90; 30-4-110
SD	23-6-18
TN	40-4004; 10-7-505
TX	Crim. Proc. Art. 55.04
UT	77-26-19; 77-26-20
VT	
VI	
VA	19.2-392.4.C; 9-111.13
WA	10.97.120; 43.43.856; 43.43.810
WV	29B-1-5; 15-2-24(j)
WI	
WY	

Full titles of state code compilations are set out in individual state tables in Section 2.

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SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

18. Public Records

AL	36-12-40
AK	09.25.110; 09.25.120
AZ	39-121.01
AR	12-2801
CA	6251 Govt. Code
CO	24-72-201; 24-72-303
CT	1-15; 1-19; 1-21(j)
DE	29-6412
DC	1-1521
FL	119.01
GA	27-220; 40-2701
HI	571-84; 92-9; 92-50
ID	9-301; 59-1009
IL	116-43.4
IN	4-1-6-1; 5-14-1-2
IA	68A-1
KS	45-201
KY	61.870

LA	44:1
ME	1-401
MD	76A-1
MA	66-10; 66A-1
MI	28.760; 4.1801
MN	15.17
MS	25.53.53
MO	109.180; 109.190
MT	2-6-101
NB	84-712; 29.3520
NV	293.010
NH	7A:1; 7A:4; 91A:4
NJ	47:1A-1
NM	14-2-1
NY	Pub Off Law .87
NC	132-1
ND	44-04-18
OH	149.43

OK	51-24
OR	192.001
PA	65.66.1
PR	32-1781
RI	38-2-1
SC	30-4-10
SD	1-27-1
TN	10-7-503
TX	TRCS Art. 6252-17a, Sect. 3(a)(8)
UT	78-26-2
VT	1-315
VI	3-881
VA	42.1-76
WA	42.17.250
WV	29B-1-1
WI	19.21
WY	9-9-101

Full titles of state code compilations are set out in individual state tables in Section 2.

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SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

19. Separation of Files

AL	
AK	Reg. 6AAC, 60.030
AZ	
AR	
CA	
CO	
CT	
DE	
DC	
FL	
GA	92A-3005; Reg. 140-2.02
HI	
ID	
IL	
IN	5-2-4-2
IA	692.8; 692.9
KS	
KY	

LA	Reg. 17-3:9
ME	
MD	
MA	
MI	
MN	
MS	
MO	
MT	
NB	
NV	
NH	
NJ	
NM	
NY	
NC	
ND	
OH	

OK	
OR	
PA	18-9106
PR	
RI	
SC	73-21
SD	
TN	
TX	
UT	
VT	
VI	
VA	
WA	
WV	
WI	
WY	

Full titles of state code compilations are set out in individual state tables in Section 2.

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SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

20. Regulation of Intelligence Collection

AL	41-9-639
AK	12.62.010; 12.62.015
AZ	
AR	
CA	
CO	
CT	
DE	
DC	
FL	943.08
GA	92A-3005; Reg. 140-2-02
HI	
ID	
IL	
IN	5-2-4-3; 5-2-4-4
IA	692.8
KS	
KY	
LA	
ME	
MD	
MA	
MI	
MN	
MS	
MO	
MT	
NB	
NV	216.245; 216.290
NH	Reg. 3
NJ	53:6-4; 53:6-5
NM	
NY	
NC	
ND	
OH	
OK	
OR	E.O. 75-23
PA	
PR	
RI	
SC	
SD	
TN	
TX	
UT	
VT	20-1954
VI	
VA	
WA	43.43.854
WV	
WI	
WY	9-2-568

Full titles of state code compilations are set out in individual state tables in Section 2.

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SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

21. Regulation of Intelligence Dissemination

AL	41-9-641
AK	12.62.030(e); 12.62.010
AZ	41-1750
AR	Reg. 2
CA	
CO	24-72-305(5)
CT	
DE	
DC	
FL	943.08
GA	92A-3005; Reg. 140-2.02
HI	
ID	
IL	
IN	5-2-4-6
IA	692.8
KS	
KY	17.150(2)
LA	
ME	16-614
MD	
MA	
MI	
MN	15.162(2a)
MS	
MO	
MT	44-5-404(2)
NB	Reg. 7
NV	216:245
NH	
NJ	
NM	
NY	
NC	
ND	
OH	
OK	
OR	
PA	
PR	
RI	
SC	
SD	
TN	
TX	
UT	77-26-13
VT	20-1955
VI	
VA	
WA	43.43.854; 43.43.856(2)
WV	
WI	
WY	9-136.27; 9-2-568

Full titles of state code compilations are set out in individual state tables in Section 2.

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SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

22. Security

AL	41-9-594; 41-9-621(9); Reg. 004,005
AK	12.62.040; 12.62.050; Reg. 6AAC, 60.030, 60.040
AZ	
AR	5-1103
CA	P.C. Sect. 11077; Reg. Sect. 706,707
CO	
CT	54-142i
DE	11-8604; 11-8605; 29-5940
DC	
FL	943.08
GA	92A-3003; Reg. 140-2.02, .08, .09
HI	846-7
ID	
IL	
IN	4-1-6-2
IA	692.10; 292.12; 692.14
KS	22-4704; Reg. 10-11-1
KY	
LA	15:5; 15:578.14
ME	
MD	Reg. 12.06.08.11
MA	6-171; 6-174; Reg. 3.13, 3.16, 19, 21
MI	
MN	15.1641; Reg. IV
MS	
MO	E.O.; Reg. 5.1.1, 5.3.1, 5.5.1
MT	44-5-401 through 405
NB	29.3518, 29.3519; Reg. 3
NV	179.080.1; 179.080.2
NH	Reg. 1, 2
NJ	
NM	4-25-7
NY	Ex. Law 837
NC	
ND	
OH	1347.05
OK	
OR	E.O. 75-23; Reg. 257-10-025
PA	18-9131; Reg. 195.6
PR	Act 129, Sect. 8; Reg. Sect. 14, 16, 17
RI	
SC	Reg. 73-21; 73-23
SD	
TN	
TX	
UT	77-26-16(5),(6)
VT	
VI	
VA	9-111.10; Reg. 14.0-14.6
WA	10.97.090
WV	
WI	
WY	9-2-568

Full titles of state code compilations are set out in individual state tables in Section 2.

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SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

23. Transaction Logs

AL	41-9-640
AK	12.62.030; Reg. 6AAC, 60.070
AZ	
AR	Reg. 6,7
CA	P.C. Sect. 11078; Reg. Sect. 703(c)
CO	
CT	54-142h(c)
DE	Reg. 1.5
DC	
FL	943.055
GA	92A-3003; Reg. 140-2.02, .06
HI	846-6
ID	
IL	
IN	4-1-6-2
IA	692.2; 692.3
KS	Reg. 10-14-1
KY	
LA	Reg. 17-3:6
ME	16-620.5
MD	Reg. 12.06.08.10
MA	6-172
MI	
MN	Reg. VI
MS	
MO	Reg. 2.3.2, 6.2.3
MT	44-5-215; 44-5-305; 44-5-404(3)
NB	29-3517
NV	179A.130
NH	Reg. 3.C.4
NJ	
NM	
NY	
NC	
ND	
OH	
OK	
OR	Reg. 257-10-035
PA	18-9121(f)
PR	Reg. Sect. 9(e)(f), 10
RI	
SC	Reg. 73-22
SD	Reg. 2:02:02:05
TN	
TX	
UT	
VT	
VI	
VA	9-111.11; Reg. 11
WA	Reg. 365-50-320; 10.97.050(7)
WV	
WI	
WY	

Full titles of state code compilations are set out in individual state tables in Section 2.

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SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

24. Training of Employees

AL	
AK	12.62.030(d)
AZ	
AR	5-1112
CA	P.C. Sect. 11077; Reg. Sect. 710
CO	
CT	54-142i(d)
DE	
DC	
FL	943.08
GA	92A-3003; Reg. 142-2.09
HI	846.7(5)
ID	19-4812
IL	
IN	4-1-6-2
IA	692.11
KS	
KY	15.330; 15A.070
LA	15:578.2
ME	
MD	
MA	6-171
MI	
MN	
MS	
MO	Reg. 5.4.1
MT	
NB	Reg. 3; 29-3518
NV	
NH	
NJ	
NM	
NY	
NC	
ND	
OH	
OK	
OR	
PA	
PR	
RI	
SC	
SD	
TN	
TX	
UT	
VT	
VI	
VA	Reg. 14.4
WA	
WV	
WI	
WY	

Full titles of state code compilations are set out in individual state tables in Section 2.

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SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

25. Listing of Information Systems

AL	
AK	
AZ	
AR	16-804
CA	
CO	24-30-606; 24-30-607
CT	
DE	
DC	
FL	
GA	
HI	
ID	
IL	
IN	4-1-6-7
IA	
KS	
KY	
LA	
ME	
MD	
MA	
MI	
MN	15.163
MS	
MO	
MT	
NB	
NV	
NH	7-A:2
NJ	
NM	
NY	
NC	
ND	
OH	1347.03
OK	74-118.13
OR	
PA	18-9171
PR	
RI	
SC	
SD	
TN	
TX	
UT	
VT	
VI	
VA	
WA	
WV	
WI	
WY	

Full titles of state code compilations are set out in individual state tables in Section 2.

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SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

26. F.O.I. (Including Criminal Justice Information)

AL	
AK	
AZ	
AR	12-2801
CA	
CO	24-72-301; 24-72-303
CT	
DE	
DC	1-1521
FL	119-01
GA	40-2701
HI	92-50
ID	9-301
IL	
IN	4-1-6-1
IA	
KS	50-712
KY	61-878
LA	44:3(4)
ME	1-401
MD	76A-1, 2
MA	66A-1
MI	4.1801
MN	15.162
MS	
MO	
MT	
NB	
NV	
NH	
NJ	
NM	14-2-1; 14-3-2
NY	
NC	
ND	
OH	149.43
OK	
OR	192.500
PA	
PR	
RI	38-2-1
SC	
SD	1-27-1
TN	10-7-507
TX	TRCS Art. 6252-17a
UT	
VT	1-317(b)(5)
VI	3-881(g)
VA	H 1427, 2.1-342
WA	
WV	
WI	19.21
WY	

Full titles of state code compilations are set out in individual state tables in Section 2.

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SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

27. F.O.I. (Excluding Criminal Justice Information)

AL	
AK	
AZ	39-121.01
AR	
CA	Sect. 6254 Govt. Code
CO	
CT	4-190(i)
DE	29-10002(d)(6)
DC	
FL	
GA	
HI	
ID	
IL	
IN	
IA	692.18
KS	
KY	61-878

LA	44:3(4)
ME	1-401; 25-1631
MD	
MA	
MI	
MN	
MS	25-41-3
MO	
MT	
NB	
NV	
NH	106-B:14; 91-A:5
NJ	
NM	29-10-4
NY	
NC	
ND	
OH	1347.04; 149.43

OK	
OR	181.540; 192.500
PA	
PR	
RI	38-2-1
SC	
SD	
TN	10-7-503
TX	TRCS Art. 6252-17a
UT	63-2-89
VT	1-317(b)(5); 20-2056
VI	
VA	211-342; 2.1-384
WA	43.43.710; 42.17.250
WV	29B-1-4
WI	
WY	9-9-101; 9-2-568(d)

Full titles of state code compilations are set out in individual state tables in Section 2.

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SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

28. Central State Repository

AL	41-9-591
AK	
AZ	41-1750.B.6; 41-2205
AR	5-1102
CA	Penal Code Sect. 11105
CO	24-32-401, 412
CT	29-11
DE	11-8501
DC	4-134a
FL	943.051
GA	92A-3002
HI	846-2, 2.5
ID	19-4812
IL	38-206-2; 127-55a.6
IN	10-1-1-12
IA	749.1
KS	22-4705
KY	17-140

LA	15-577
ME	25-1541
MD	27-747(b)
MA	6-168
MI	4.461, 4.462
MN	299C.05, .06
MS	
MO	Reg. 1.1.2, 2.1.1
MT	44-5-213
NB	29-209; 27-210
NV	216.235
NH	106-B:14
NJ	53:1-13
NM	29-3-1
NY	Exec Law Sect. 835, 836
NC	114-10; 114-19
ND	12-60-01, 07, .10
OH	109.57(C)

OK	74-150.9
OR	181.066
PA	18-9161
PR	Act June 30, 1979 #129, Sect. 1, 13
RI	12-1-7, 12-1-9
SC	23-3-110
SD	23-5-1; 23-5-2; 23-6-1
TN	E.O. #9; 38-503
TX	TCS Art 4413(14)
UT	77-26-3
VT	20-2051
VI	19-2-388
VA	19.2-388
WA	43.43.700
WV	15-2-24
WI	165.83
WY	9-2-564

Full titles of state code compilations are set out in individual state tables in Section 2.

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Section 3

IMPLEMENTATION ISSUES

This section analyzes four policy areas that are especially important to an effective criminal justice information law and policy. The areas addressed are (1) Regulatory Authority, (2) Review and Challenge, (3) Access and Dissemination, and (4) Record Quality and Audit.

Regulatory Authority

When a state undertakes to govern the privacy and security of criminal history information, legislation or regulations often require interpretation for effective implementation, since all possibilities can never be anticipated in drafting. For the most part state legislation is not detailed, and looks to regulations for implementing detail. If implementing regulations are to be considered by the various state and local operating agencies who maintain information, there can be wide disparities in the way the same or similar questions are resolved. Although a state may establish a consolidated information system within a central state repository, the question of what entity will be charged with rule-making and oversight of the information system remains, as well as the question of where in government such an authority will be established. The role of the courts in choosing and participating in a regulatory authority is important since the judicial branch guards its separate status, but must cooperate if an information system is to function efficiently. Record management practices of the judicial branch should be in conformity with those of executive branch agencies and the question of how to achieve this uniformity between the two branches of governments can be extremely sensitive.

The Role of a State Regulatory Authority

The federal regulations do not require that a single authority be established to provide uniformity in the development of state policy for the regulation of criminal history information, or to oversee and monitor the operations of the information system. The regulations do contemplate a central state repository, but the matter of a state regulatory authority remains open for the states to resolve.

In the early seventies, the National Advisory Commission on Criminal Justice Standards and Goals recognized the need for such a rule-making authority, and recommended that each state establish a separate privacy and security council that could serve as an "ombudsman," vigilant to whether privacy requirements are too lax or too restrictive. The reason for recommending a separate privacy and security council was to allay the fear that a regulatory authority, which deals daily with criminal justice agencies, may become biased on behalf of the agencies and perhaps not provide sufficient protection to individual privacy.

The powers of a regulatory authority vary from state to state depending upon the political environment. There are three basic functions to be provided by a regulatory authority: (1) promulgation of regulations governing the management of and access to criminal history information; (2) review and adjudication of complaints or disagreements arising from the administration of information policy; and, (3) monitoring the operation of the system to assure compliance with laws and regulations. Conceivably, these functions could be assumed separately by three different

agencies, especially if the state has an investigative or auditing agency that provides independent analysis. On the other hand, all of these functions could be combined into one regulatory agency.

Because statutes vary in detail about information regulation, the powers and functions needed by a regulatory authority will also vary. If a state statute is brief and provides merely a framework for policy, a regulatory authority may need far more latitude in the promulgation of policies and the development of rules to implement them. The choice is how much guidance the state legislature provides, and how much authority should be left to specialists and experts.

Options for Record System Supervision

In 1977, 38 states had a state regulatory authority; currently 46 of them do. Additionally, 10 states had separate privacy and security councils in 1977; and 21 states have such councils now. Since less than half of the states have such a council, it seems that the need for an independent "ombudsman" is considered by the states to be a much lower priority than the need for a central regulatory authority.

A trend toward the consolidation of criminal justice information systems continues. Five of the six states that enacted comprehensive legislation during the past three years established central repositories. A central repository helps to insure an adequate level of completeness and accuracy, though this depends primarily upon faithful disposition reporting. The repository is, however, merely a mechanism for record maintenance and control; rules to govern it and procedures for reporting must be fashioned.

Even though the great majority of the states now have regulatory authorities, the choice for the situs in government of this responsibility varies greatly depending upon each state's political and criminal justice environment. A review of the legislation indicates that, in most cases, one of three options has been used for the placement of regulatory authority: (1) the Department of Public Safety, (2) the Office of the Attorney General, or (3) an Independent Regulatory Board. A general description and comparison of these approaches may be useful.

Department of Public Safety

Many states have created a department of public safety within the executive branch with responsibility for a wide range of functions, commonly including fire, law enforcement and corrections. The judiciary usually is not included within this executive department, but may cooperate with it through a liaison or advisory board. In states with such an arrangement the department frequently is given management responsibility for criminal justice information. Rule-making authority for privacy and security compliance and information system management and operation may rest with the public safety director or commissioner, or may be vested in an advisory or regulatory board within the department. The day-to-day responsibility for system operation is usually vested in an information system manager and is a function separate from policy formulation.

Effective liaison with the judiciary to assure its participation in disposition reporting and information flow may be more difficult to achieve when the executive department manages the information system. Major gaps in information control will result unless the judiciary is a full participant and observes prescribed procedures. One device for achieving this participation is for representatives of the judiciary to participate in the formulation of an overall information management policy acceptable to the courts. When regulations or orders governing executive agencies are promulgated, compatible court rules can be issued by the state's chief justice or judicial council.

The department of public safety usually exercises control over most executive branch criminal justice information systems. Thus, sensitive information housed in state law enforcement agencies, correctional agencies and record repositories can

be treated with uniform rules of confidentiality and security. Also this structure and its policies, because of its operational nature, has credibility and exercises a certain degree of control with regard to the information practices of local criminal justice agencies.

The Attorney General

In a number of states, the Office of the Attorney General has been given responsibility for the development of policy regulating criminal justice information. The effectiveness of this arrangement depends upon the attorney general's relationship with the criminal justice community, since a close working relationship between operating agencies and the regulatory authority helps to assure acceptance of rules. In this role the attorney general prescribes regulations and interprets the law to resolve disputes involving record subjects or third party requestors. The attorney general may even enforce information system regulations by prosecuting criminal actions, thus combining in one place a broad range of responsibilities for making and overseeing criminal justice information policy. However, some states view this as an unsatisfactory arrangement for the reason that it can be awkward for the attorney general to promulgate regulations, interpret compliance and prosecute violations. In addition, because the attorney general's office often does not have authority over all aspects of state criminal justice information functions, its scope of control of statewide information policy may be limited.

Independent Regulatory Boards

Another option is to establish an independent bureaucratic entity to formulate policy and rules for the criminal justice information system. The operational management of the system may be vested in the state police, or elsewhere. The board may or may not perform the function of "ombudsman," as discussed earlier, and is thus to be distinguished from a privacy and security council which may be dedicated solely to such a task.

A few states have privacy boards that have responsibility for all state information systems, not just those for criminal justice. This may be the case when the state has a strong open records law which must be observed in the interest of individual privacy.

Review and Challenge

This part considers the right of a record subject to examine his record and to request the amendment or removal of information deemed inaccurate, irrelevant or stale. A right to review and challenge a record is consistent with fairness, for it seems equitable that an individual be able to see information used to make decisions affecting him. This basic right is found in many different areas of privacy law, including the Privacy Act of 1974 and the Federal Regulations.

In addition, an essential requirement for any recordkeeping system, without regard to matters of privacy, is that information be complete and accurate. Review by the data subject can help to achieve accuracy since he is in a good position to know whether the record adequately reflects his criminal history.

In states that have adopted review and challenge provisions, an exception usually is made for intelligence and investigative information. This is consistent with the Federal Regulations which do not require that the data subject have access to such information. Review rights under the regulations are limited to information concerning arrest, disposition, sentence and post-sentence history.

The difference between review and challenge should be emphasized. Simply because a state permits a data subject to review his record does not mean that challenges are permitted in the event error is claimed. Sound policy, however, would appear to dictate that if a record subject can review his record, there also should be a procedure for correcting erroneous information.

The technique of review and challenge probably is the most pervasive privacy protection procedure in effect nationally today. Even in states with no legislation or regulation providing for review and challenge, the privilege is apparently available through informal practice, since LEAA has received written assurances from every state that review and challenge practices are in place. The number of states identified through this survey which provide the individual with a right to inspect his record has increased to 43 (81% of the states). The number of states specifically providing the individual with a right to challenge his record is 35 (66%). It may be that some states which have not formally created a substantive right of challenge informally observe a policy of correction. Nevertheless, the right to challenge lags behind the right to inspect. This may reflect a fear in many states that the burden of a challenge procedure would be beyond their resources. However, those states allowing challenge have not reported a significant burden on the criminal justice system from the exercise of the right.

Every state with a challenge procedure provides for administrative review in case of disagreement. This administrative appeal generally goes first to the highest official in the agency, and then on to the state regulatory authority or some other designated official or agency. In this survey a total of 18 states (34%) were found to provide for judicial review if the results of the administrative review are not satisfactory to the record subject. In the absence of statutory provisions specifically authorizing judicial review, many state courts would be likely to provide for review under their general equitable powers.

Access and Dissemination

One of the most critical parts of any criminal justice information policy is the matter of access to criminal records by third parties--individuals or agencies other than the criminal justice agency holding the records or the record subjects. Third party disclosures may be to other criminal justice agencies, government non-criminal justice agencies or to the general public, including the media and private employers.

The Federal Regulations do not directly impose restrictions on access to criminal records. Conviction records (where the accused is found guilty or pleads guilty) are expressly permitted to be freely disseminated. Non-conviction records (arrest information if no disposition has been reported after a year and the case is not still actively pending, and dispositions favorable to the accused) are affected by the regulations, but only to the extent that dissemination policy must be in accordance with state law, executive order or court rule. Thus, each state is left free to determine its own scheme of dissemination by legislation or other official action.

Freedom of Information Laws

The 1981 survey found that fifty-two states (98%) now have freedom of information acts (FOIA) or public record laws (some states have both) that declare government records to be open and available for public access and inspection. In twenty-two of these states, criminal justice records (or at least some types of criminal records) are exempt from the public disclosure requirement. The language of the exemptions varies widely: sometimes it refers specifically to criminal justice information or to law enforcement agencies or purposes, at other times to specific agencies or to specific information uses. In addition to the specific exemptions, other state FOIA or open record laws have general exemption language that can be construed to cover criminal records. A common form of such an exemption (found in a majority of state FOIA laws) relates to records "required to be kept confidential" by federal or state law or regulation. The Department of Justice regulations have been interpreted by some state officials to remove criminal history records from public availability under such an exemption. Clearly, where other state law, such as a comprehensive criminal history record statute, declares certain records to be con-

fidential, the FOIA exemption would be satisfied. Still another frequent form of exemption relates to records where disclosure would constitute a "clearly unwarranted invasion of privacy." Thirteen state FOIA acts include this kind of exemption, which has been construed in some states to cover criminal records.

Thus, freedom of information acts do not necessarily render all criminal records public. The important point is that where such laws exist, care must be taken to assure that the state's criminal record disclosure policy is consistent with the open record law rather than conflicting. Where the criminal record policy is embodied in state law, the law generally will be considered to override the FOIA law or to bring criminal records within an exemption. The same is generally true where the criminal record policy is embodied in executive orders or in statewide regulations. However, in some of these cases, the relationship between the criminal history policy and the FOIA law may be ambiguous and may cause confusion and misunderstanding unless the policy is carefully drafted and publicized.

State Policies on Dissemination

For the 1978 Compendium and the 1979 Supplement, state laws relating to criminal record dissemination were grouped under one classification category. For this 1981 Supplement, dissemination laws and regulations have been classified into subcategories so as to permit analysis of national dissemination trends according to record types and types of recipients. The subcategories relate to (1) conviction information, (2) non-conviction information, and (3) arrest information, and to three types of recipients--(1) criminal justice agencies, (2) government non-criminal justice agencies, and (3) the private sector (including the media, employers, credit agencies and the like). The individual state summary tables in Section 2 indicate for each type of information and each type of recipient whether disclosure is authorized or prohibited by law. It should be noted that a state's actual disclosure policy may differ from the classification of its laws, since the policy in effect may be more or less stringent than the law requires.

The table on page 48 shows the cumulative totals of each of the dissemination subcategories. Not surprisingly, the table shows that all types of criminal history records are freely disclosed in virtually every state for purposes related to the administration of criminal justice. Fifty-one states (96%) expressly authorize the dissemination of conviction records to criminal justice agencies and 49 states (92%) authorize the dissemination of non-conviction and arrest records to criminal justice agencies. Further, no state law expressly prohibits the dissemination of any kind of criminal record within the criminal justice community. It should be noted that private investigators or private security organizations are generally not accorded the same access rights as public criminal justice agencies; rather, they usually are held to have no greater rights than the general public unless special allowances are made by statute or regulation.

It is customary for state law to authorize the disclosure of criminal history information to a variety of non-criminal justice governmental agencies for employment purposes and other purposes, even though private sector access for such purposes may not be authorized. The 1977 Analysis cited this prevailing policy and discussed in detail the reasons for allowing government access, including record checks of applicants for jobs involving national security or officials in high public offices. The survey revealed that 43 states (81%) authorize the disclosure of conviction information to government non-criminal justice agencies, 35 states (66%) authorize the disclosure of non-conviction information to such agencies and 37 (70%) authorize the disclosure of arrest information to such agencies. On the other hand, relatively few states prohibit the release of criminal records to government non-criminal justice agencies. Four states prohibit the disclosure of conviction records, ten states prohibit the

SUMMARY OF STATE STATUTES AND REGULATIONS ON DISSEMINATION OF CRIMINAL HISTORY RECORDS

Type of Recipient	Record Type	Number Of States That: Authorize Access	Number Of States That: Prohibit Access
Criminal Justice Agencies (For Employment and Administration of Criminal Justice)	Conviction	51	0
	Non-conviction	49	0
	Arrest	49	0
Government Non-Criminal Justice Agencies (Including Public Employment and Licensing)	Conviction	43	4
	Non-conviction	35	10
	Arrest	37	8
Private Sector (Including Media, Employers, Credit Agencies, Private Investigators)	Conviction	32	7
	Non-conviction	25	14
	Arrest	27	12

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disclosure of non-conviction records and eight states prohibit the disclosure of arrest information to government non-criminal justice agencies.

With very few exceptions, the states are much more restrictive in their dissemination policies toward private sector agencies and individuals, particularly with respect to non-conviction records and open arrest records. The laws of 32 states (60%) may be construed as authorizing the disclosure of conviction records to private persons. On the other hand, seven states prohibit the disclosure of even these less sensitive records to the private sector. With respect to other types of data, restrictions are even more common. Less than half of the state laws (25) specifically authorize the dissemination of non-conviction records for private purposes and 27 (51%) authorize the disclosure of arrest records. However, 14 states (26%) prohibit the disclosure of non-conviction records to the private sector and 12 states (23%) prohibit the disclosure of arrest records to private persons.

With respect to the above tabulations, several points should be borne in mind. First, only seven states prohibit the disclosure of all types of records to the private sector; in all of the other states, presumably at least conviction records are available, although they may not be specifically authorized. Second, even though a state law may authorize the disclosure of certain types of records for private purposes, actual practice in particular criminal justice agencies may be to withhold them. Finally, even though a state's law may not specifically authorize the public disclosure of certain types of records, actual practice in particular criminal justice agencies may be to disclose them unless disclosure is expressly prohibited. In summary, there are a large number of states in which the public disclosure of at least some types of criminal records is neither authorized nor prohibited. Whether or not these records can be accessed for private purposes will depend upon factors other than state law, such as local law, local agency policy or the impact of the state's public record or freedom of information law.

Intelligence and Investigative Information

It is noteworthy that in contrast to the attention given to criminal history records by the states, relatively few states have undertaken to regulate the collection or dissemination of intelligence information. Only 13 states (25%) restrict the collection of intelligence information and 19 (36%) regulate the dissemination of intelligence information. This inactivity no doubt reflects a legislative reluctance to regulate by statute this type of sensitive information. However, even without explicit limitations on intelligence information, the standard operating procedure in most jurisdictions is to carefully guard such data and to disseminate it only to law enforcement personnel. In some instances, intelligence information is not permitted to be kept in automated data systems and frequently it is not permitted to be disseminated outside of the agency which compiled it.

Florida recently enacted legislation exempting a variety of criminal justice information from its public records law. Intelligence and investigative information is so excluded. (Other information exempted is that which reveals informants, surveillance techniques, undercover personnel, victims of sexual assault or child abuse, the assets of a victim of crime, and the name and address of law enforcement personnel.) Such exemptions are common in other state public record laws.

Purging or Sealing

Classifying a statute as "purge" or "seal" can be difficult when different words are used to limit or close access to information: e.g., remove, erase, close, expunge, destroy. For purposes of the Compendium series, statutes or regulations that provide for the physical destruction of records or their return to the record subject have been classified as purging provisions. Sealing has been considered to mean the removal of records from active files. However, in some cases, a record may be removed from a central repository while original operating agency files are left intact. In other cases, information in

central or local repositories that has been "purged" by court order may yet be available in the public court record.

The survey and research revealed that 35 states (66%) provide for the purging of non-conviction information. Sealing of non-conviction information is provided for in 20 states (38%). For conviction data, 24 states (45%) provide for purging while 22 states (41%) have provisions for sealing such information. (Most states provide for the confidentiality of juvenile justice records, but that subject is beyond the scope of this survey.)

Concerning the rights of the record subject, 27 states provide that sealing or purging shall remove the disqualifications attendant upon conviction for a crime (right to vote or employment). Twenty-two states specifically authorize the record subject to deny the existence of an arrest or conviction subsequently purged or sealed.

Local Agencies and State Regulations

Uniformity is lacking as to whether laws and regulations applicable to the central repository and state agencies also control local criminal justice agencies. Some states regulate only the state agencies, considering it impractical to impose information management requirements on small criminal justice units. On the other hand, if local departments may disclose information restricted in state agencies, state laws may be circumvented. For this reason, nineteen states include local agencies within the purview of the state legislation or regulations.* As information systems continue to be improved and automated, it is probable that local agencies will be subjected to information regulations to the same extent as state agencies.

*Alabama, Alaska, California, Colorado, Connecticut, Florida, Hawaii, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Montana, Nebraska, Nevada, Pennsylvania, the Virgin Islands, Virginia and Washington.

Record Quality and Audit

Accuracy of information is frequently identified as one of the most important aspects of "information privacy." When information is used to make decisions that affect individuals, and when that information is as sensitive as that contained in criminal justice records, good management requires that the information be complete and accurate. Forty-nine states (92%) have promulgated laws or regulations containing specific requirements for accuracy and completeness of records. This represents an increase of eight states over the number in 1977, and a significant increase from the 14 states (26%) that had such requirements in 1974. Some of these laws deal substantively with record accuracy, through such requirements as procedures to insure the accurate recording of information and ongoing systematic procedures to detect and correct errors. Other laws deal with such matters as disposition reporting, query before dissemination, audits and transaction logs.

Disposition Reporting

A central repository increases the likelihood of complete and accurate criminal history information. This approach assumes the existence of a disposition reporting system and the cooperation of criminal justice agencies reporting from the regional or local level.

The Federal Regulations require that, if a state has a central repository, dispositions of criminal charges must be reported to the repository within 90 days. Other agencies must report and record dispositions as promptly as feasible. Given the variety of participants and activities involved in the process after arrest (e.g., discretion to select charges, preliminary hearings, diversion, trial continuances, sentencing, appeals, performance under probation or parole, release from the system), most states have experienced difficulty in fashioning a workable disposition reporting process. In spite of these difficulties, the development of improved practices and

procedures designed to support a more complete and accurate data base continues. The survey found that 46 states (87%) have some statutory provision requiring the reporting of dispositions, although not all of them set out reporting deadlines and relatively few of these statutes contain sanctions to make them mandatory.

Query Before Dissemination

In addition to complete and timely reporting of dispositions, another key procedure to maintaining accurate records is for local criminal justice agencies to query the central repository before permitting access or dissemination of their records. The Federal Regulations require a query whenever the state has designated a central repository, except in those instances where time prohibits. A central repository, procedures for disposition reporting, and a query to the CSR prior to dissemination are the essential techniques for record accuracy and completeness.

Audits

The Regulations require that each state have an audit program to monitor compliance with information system requirements. The purpose of the audit is to assure that the laws are being observed, that information is accurate and complete and that dissemination restrictions are honored. With respect to the conduct of audits, two basic policy approaches are evident. Audits may be performed by personnel of the agency which controls the records (the central state repository), or the audit may be performed by persons outside the controlling agency. An advantage of the former is that the audit would be less costly: it would be performed by personnel most familiar with the records systems, and cooperation would be enhanced through previous relationships. The principal advantage of using an outside auditor is that the review would be conducted in an independent and objective fashion, at least in the eyes of the public.

The Regulations call for two types of audit: (1) an audit of the central state repository; and (2) audits of other local and state agencies providing information to the repository. Audits of local agencies are commonly conducted by central state repository personnel. The audit of the repository, however, is subject to varying approaches. Audit choices may range from the repository itself, a parent state agency (e.g., a division of the department of public safety), an associated criminal justice agency (e.g., the SPA), a sister state agency (e.g., office of finance or budget), or a private outside evaluator. The state choice may vary according to cost, feasibility, experience or political climate.

Many states continue to develop an audit policy approach. The survey found that 25 states (47%) have an audit provision in their statutes or regulations. The prevailing approach appears to be an annual audit of the central state repository and periodic random audits of contributing state agencies. Local criminal justice agencies in the state are usually so numerous that regular scheduled audits of all of these agencies are, generally, beyond the resources of the state repository. Accordingly, some scheme for local audits must be developed, often based upon a random sampling approach. Adequate budget resources for auditing staff appears to be a major concern among record systems administrators.

Transaction Logs

An especially effective auditing tool is the transaction log--the record of activity with respect to disclosures from any file. At present, 29 states (55%) specifically require transaction logs, a significant increase over the 11 (22%) reported in 1977, and the 6 (12%) in 1974. In addition to facilitating audit, transaction logs serve the mission of record quality by providing a means of notifying and correcting inaccurate information disseminated to third parties. The "life" of the transaction log in many states ranges from one to three years and, where some degree of automation

exists, the process is computerized.

Security

In addition to monitoring and reporting record access, an audit may review the information system's security--the methods of protecting data from unauthorized loss, alteration or dissemination. A total of 32 states--almost 60%--mandate security programs. Many states have detailed security requirements and separate provisions for manual and automated systems. Twenty-four states (45%) provide for physical security of buildings and equipment against fire, flood and other hazards. Twenty-one states (39%) provide for security of computers and other automated processing equipment. Twenty-five states specifically require that the employees responsible for information maintenance be carefully screened for the job assignment and receive proper training. To evaluate the level of compliance with these laws, audit procedures may also serve to verify employee selection and training.

Penalties and Remedies

If an audit discloses that personnel or agencies habitually fail to carry out their responsibilities, sanctions must be available to induce compliance with state laws or regulations. In this respect, 39 states (four more than in 1977) provide criminal penalties for intentional violation of criminal history regulations. Thirty-three states provide civil remedies or penalties. Civil penalties may include the reassignment or termination of personnel who willfully violate laws or regulations, while criminal penalties include fines or imprisonment.

Section 4

ACCESS FOR RESEARCH AND STATISTICAL PURPOSES

When criminal history information not identifiable to particular persons is disclosed for research or statistical purposes, privacy and confidentiality cannot be impaired. The Federal Regulations recognize this and provide that such purely statistical information is excluded from coverage.

However, members of the academic and research community make persuasive arguments for the need to obtain criminal history information which is referenced to identifiable individuals. The researcher may wish to pull together data from several sources concerning a particular individual and must be able to use personal identifiers to do so. He may also wish to track a particular individual's criminal justice system contacts over a period of time and will need identifiable information to do so. Such research often is useful to the administration of criminal justice in the study of the effectiveness of particular operations or activities or the development of more effective approaches to criminal justice responsibilities. The Regulations recognize this usefulness and provide that agencies covered by the regulations may, but are not required to, disclose identifiable criminal history information for research or statistical purposes. Such disclosure is permitted regardless of whether or not the proposed research or statistical activity is supported by JSIA funds.

The Department of Justice (DOJ) has issued additional regulations covering the confidentiality of research and statistical data gathered in the course of JSIA-funded projects. These regulations (28 CFR Part 22) cover, among other things, authorized uses and transfers of research and statistical data, subject notification requirements, final data disposition requirements and data security requirements. They also provide that the data shall be immune from legal process and may not be introduced in a judicial proceeding without the consent of the data subject. *These requirements apply only where the project or activity for which the research or statistical data is gathered is JSIA funded, and they apply only to the data gathered, not to the agency records from which the data is extracted.*

This analysis concerns only the privacy and security regulations (28 CFR Part 20), not the confidentiality regulations described in the previous paragraph. BJS has published a pamphlet explaining the confidentiality regulations ("Confidentiality of Research and Statistical Data," LEAA, U.S. Department of Justice).

Requirements of the Regulations

As noted, the privacy and security regulations authorize, but do not require, the disclosure of criminal history records (including non-conviction information) for research or statistical purposes. Where information identifiable to particular individuals is released for such purposes, an agreement insuring confidentiality must be entered into between the criminal justice agency and the recipient. The agreement must:

1. specifically authorize access to the data;

2. limit the use of the data to research, evaluative or statistical purposes;

3. insure the confidentiality and security of the data; and

4. provide sanctions for violations.

The regulations do not specifically require that the agreement be in writing, but BJS has strongly encouraged written agreements. The regulations also do not provide for a charge to be made by the criminal justice agency for the cost of producing

the information and do not expressly authorize or prohibit redissemination by the recipient for further research purposes. However, BJS has said that reasonable charges are permissible and that further dissemination for research or statistical purposes is permissible if a written confidentiality agreement is secured from the new recipient.*

Response of the States

The results of the 1981 survey indicate that 20 states specifically provide by statute or regulation for the release of criminal history information for research or statistical purposes.** The influence of the JSIA regulations is evident, since the majority of these states use statutory language essentially identical to that of the regulations.***

Those that depart from the language of the regulations generally add requirements or restrictions not expressly stated in the regulations. For example, several states add requirements related to the qualifications of researchers or the type of research that may qualify for disclosure. The Alaska statute permits disclosure to "qualified" persons for research "related to law enforcement," and the implementing regulations provide that the research program must be approved by the Governor's Commission on the Administration of Justice. The California statute provides that identifiable data may be released for research purposes only to a "public agency or bona fide research body immediately concerned with the prevention or control of crime, the quality of criminal justice, or the custody or correction of offenders." New Mexico's statute permits dissemination of non-conviction data for research purposes only to "personnel assigned to conduct actual research for a state or federally approved criminal justice project." Finally, Oregon's regulations permit information to be made available only to "qualified persons for research and evaluation related to criminal justice activity."

All of the 20 states provide for the execution of confidentiality and nondisclosure agreements conforming essentially to the requirements of the regulations. However, several states include additional requirements. A common additional provision is one giving the criminal justice agency (or some commission or board) the authority to monitor the progress of the research to ensure that the nondisclosure agreement is complied with and to terminate access if violations are discovered. Alaska requires researchers to post a $500 bond upon the signing of the nondisclosure agreement. Washington's statute provides that the nondisclosure agreement must contain provisions giving notice that dissemination and use of the released data is subject to state and federal laws and regulations and that these laws and regulations "shall be cited with express reference to the penalties provided for a violation thereof."

Finally, several states include provisions limiting the publication of data or reports generated from the research. For example, Alaska and North Carolina provide that the criminal justice agency releasing the records may examine and verify the accuracy of all data or reports generated from the research and may prohibit the publication of erroneous data. California's statute provides that reports or publications derived from disclosed records may not identify specific individuals. Connecticut's statute provides that published reports may not identify individual subjects

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*Privacy and Security of Criminal Justice Information: A Guide to Research and Statistical Use, BJS, 1981.

**Alaska, California, Connecticut, Florida, Hawaii, Iowa, Maine, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Mexico, North Carolina, Oregon, Puerto Rico, Utah, Virginia, Washington.

***Language essentially identical to the regulations is found in the statutes of Connecticut, Hawaii, Maine, Maryland, Massachusetts, Montana, Nevada, New Hampshire, Utah, Virginia and Washington.

without their prior written consent.

Several points should be kept in mind concerning the availability of criminal history records for research and statistical purposes. First, the Federal Regulations do not apply to the dissemination of conviction records and, as noted in Section 3, 32 states authorize the dissemination of conviction records to private non-criminal justice recipients and only seven states expressly prohibit the disclosure of conviction records to the private sector. Thus, conviction records should be obtainable for research purposes under the laws of the great majority of the states. Second, even with respect to non-conviction records (including open arrest records), researchers may be able to obtain such records under the laws of states other than the 20 states that specifically authorize access, since researchers presumably are entitled to access rights as private individuals. Only 14 states expressly prohibit the dissemination of non-conviction records to the private sector and only 12 states expressly prohibit the disclosure of arrest records to private persons. To the extent that researchers can be grouped with other types of non-governmental, non-criminal justice recipients under state laws, they may be entitled to access to non-conviction records and arrest records in a number of states that do not expressly authorize researcher access, but do not prohibit it either. For example, New York permits researcher access to the records of its central state repository although such access is not expressly authorized by law.

Finally, state laws may not in all cases be conclusive on the issue of researcher access to criminal records at the local agency level, since most state laws on criminal records apply only to state criminal justice agencies or state-generated criminal records. As noted above in the discussion of state dissemination laws, only nineteen of the states have statutes that apply to local agency dissemination policies. Local agencies in other states may have dissemination policies at variance with state law; thus, researcher access may be permitted by local agencies in states other than the 20 states that expressly authorize researcher access by state law. Of course, this distinction cuts both ways. Eight of the state laws that expressly authorize researcher access do not apply to local criminal justice agency dissemination policies.* Local agencies in these states may or may not permit researcher access. Although other surveys have shown that local agencies tend to follow the lead of the states with respect to criminal record policies, particularly in those states with comprehensive laws, an analysis of local agency policy is beyond the scope of this document. Suffice it to say that the question of researcher access to criminal records may depend more on local agency policy than on state law.

*Iowa, Minnesota, New Hampshire, New Mexico, North Carolina, Oregon, Puerto Rico and Utah.

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Section 5

STATUTES AND REGULATIONS

This section of the Supplement sets forth the actual text of the state laws and implementing agency regulations enacted or amended since 1979. It is the purpose of this collection to make available to the researcher the variety of approaches and alternatives taken by the states in regard to their criminal history information practices. However, the reader is cautioned that this effort is current through July, 1981, and thus further review of a particular state's legislation may be appropriate to include the most recent enactments.

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	41-9-591 41-9-594	X X		
2. Privacy and Security Council	41-9-594	X		
3. Dissemination Regulations	Reg. 003		X	
Conviction Information	41-9-639	X		
3.10 Authorizes to Criminal Justice Agencies	41-9-642 41-9-621(6)	X X		
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	41-9-642	X		
3.12 Authorizes to Private Sector	41-9-642	X		
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	41-9-621	X		
3.21 Authorizes to Govt. Non-Criminal Justice Agencies				
3.22 Authorizes to Private Sector				
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies	41-9-639	X		
3.25 Prohibits to Private Sector	41-9-639	X		
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	41-9-621	X		
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	41-9-642	X		
3.32 Authorizes to Private Sector	41-9-642	X		
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only	41-9-621 41-9-643	X X		
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy				
5. Right to Challenge	41-9-645	X		
6. Judicial Review of Challenged Information	41-9-645	X		
7. Purging Non-Conviction Information	41-9-625	X		
8. Purging Conviction Information				

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information				
11. Removal of Disqualifications				
12. Right to State Non-Existence of Record				
13. Research Access	Reg. 003		X	
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	41-9-622 41-9-648	X X		
14.2 Auditing Requirements				
14.3 Other Accuracy/Completeness Requirements	41-9-622	X		
15. Dedication				
16. Civil Remedies				
17. Criminal Penalties	41-9-600 36-12-42	X X		
18. Public Records	36-12-40	X		
19. Separation of Files				
20. Regulation of Intelligence Collection	41-9-639	X		
21. Regulation of Intelligence Dissemination	41-9-641	X		
22. Security	41-9-594 41-9-621(9)	X X		
22.1 Physical (Building) Security	Reg. 005		X	
22.2 Administrative Security	Reg. 004		X	
22.3 Computer Security	Reg. 005		X	
23. Transaction Logs	41-9-640	X		
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)				
27. FOIA (Excluding CJI)				
28. Central State Repository	41-9-591	X		

§ 15-19-7. Effect of determination; records not open to public inspection; exception.

(a) No determination made under the provisions of this chapter shall disqualify any youth for public office or public employment, operate as a forfeiture of any right or privilege or make him ineligible to receive any license granted by public authority, and such determination shall not be deemed a conviction of crime; provided, however, that if he is subsequently convicted of crime, the prior adjudication as youthful offender shall be considered.

(b) The fingerprints and photographs and other records of a person adjudged a youthful offender shall not be open to public inspection; provided, however, that the court may, in its discretion, permit the inspection of papers or records. (Acts 1971, 3rd Ex. Sess., No. 335, p. 4622, § 6.)

In general. — The Youthful Offender Act is intended to extricate persons below 21 years of age from the harshness of criminal prosecution and conviction. It is designed to provide them with the benefits of an informal, confidential rehabilitative system. Raines v. State, 294 Ala. 360, 317 So. 2d 559 (1975).

The Alabama Youthful Offender Act was conceived for the purpose of protecting those who fall within its ambit from the stigma and practical consequences of a conviction for a crime. Accordingly, the act provides for confidentiality in the proceedings and in the availability of the offender's records with regard to the adjudication. The introduction of a jury into such proceedings would destroy any confidentiality with which the act attempts to clothe the proceedings and the youthful offender's record. As a practical matter, the provision that youthful offenders be tried "at court sessions separate from those for adults charged with crime" would become virtually impossible to carry out. Raines v. State, 294 Ala. 360, 317 So. 2d 559 (1975).

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	12.62.010	X		
2. Privacy and Security Council				
3. Dissemination Regulations				
Conviction Information	Reg. 6AAC, 60.060	X		
3.10 Authorizes to Criminal Justice Agencies	12.62.030(a)	X		
3.11 Authorizes to Govt. Non-Criminal Justice Agencies				
3.12 Authorizes to Private Sector				
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies	12.62.030(a)	X		
3.15 Prohibits to Private Sector	12.62.030(a)	X		
Non-Conviction Information	Reg. 6AAC, 60.060	X		
3.20 Authorizes to Criminal Justice Agencies	12.62.030(a)	X		
3.21 Authorizes to Govt. Non-Criminal Justice Agencies				
3.22 Authorizes to Private Sector				
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies	12.62.030(a)	X		
3.25 Prohibits to Private Sector	12.62.030(a)	X		
Arrest Information	Reg. 6AAC, 60.060	X		
3.30 Authorizes to Criminal Justice Agencies	12.62.030(a)	X		
3.31 Authorizes to Govt. Non-Criminal Justice Agencies				
3.32 Authorizes to Private Sector				
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies	12.62.030(a)	X		
3.35 Prohibits to Private Sector	12.62.030(a)	X		
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes	12.62.030(c)	X		
	Reg. 6AAC, 60.080	X		
4.3 Right to Inspect and Obtain Copy				
5. Right to Challenge	12.62.030(c)	X		
	Reg. 6AAC, 60.080	X		
6. Judicial Review of Challenged Information	12.62.030(f)	X		
7. Purging Non-Conviction Information	Reg. 6AAC, 60.100	X		
	12.62.040(3)	X		
8. Purging Conviction Information	12.62.040(3)	X		

Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information	Reg. 6AAC, 60.100	X		
10. Sealing Conviction Information	Reg. 6AAC, 60.100	X		
11. Removal of Disqualifications				
12. Right to State Non-Existence of Record				
13. Research Access	Reg. 6AAC, 60.090 12.62.030(b)	X X		
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements				
14.2 Auditing Requirements				
14.3 Other Accuracy/Completeness Requirements	Reg. 6AAC, 60.020 12.62.040(2)	X X		
15. Dedication	12.62.040	X		
16. Civil Remedies	12.62.060(a)	X		
17. Criminal Penalties	12.62.060(b)	X		
18. Public Records	09.25.110 09.25.120			X X
19. Separation of Files	Reg. 6AAC, 60.030	X		
20. Regulation of Intelligence Collection	12.62.010(b); 12.62.015 Reg. 6AAC, 60.110	X X X		
21. Regulation of Intelligence Dissemination	12.62.010(b); 12.62.015 Reg. 6AAC, 60.110	X X X		
22. Security				
22.1 Physical (Building) Security	Reg. 6AAC, 60.030,040 12.62.040(2)	X X		
22.2 Administrative Security	Reg. 6AAC, 60.040(2)	X		
22.3 Computer Security	Reg. 6AAC, 60.030,040 12.62.040(2); 12.62.050	X X X		
23. Transaction Logs	Reg. 6AAC, 60.070 12.62.030(d)	X X		
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)				
27. FOIA (Excluding CJI)				
28. Central State Repository				

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Alaska Code

Sec. 09.25.110. Inspection and copies of public records. Unless specifically provided otherwise the books, records, papers, files, accounts, writings, and transactions of all agencies and departments are public records and are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of costs a certified copy of the public record. (§ 3.22 ch 101 SLA 1962)

Cross references.—See Civ. R. 44-(b)(4). As to management and preservation of public records, see AS 40.21.

It is "specifically provided otherwise" by AS 12.45.050.—**With respect to the right of inspection and copying records under this section, it is "specifically provided otherwise," so far as police records are concerned, by the terms of AS 12.45.050, thus meeting the express exception to this section. Howard v. Jackson, 7 Alas. L.J. No. 3, p. 431 (March 12, 1969).**

Stated in State v. Coon, 2 Alas. L.J. No. 1, p. 3 (Jan. 1964).

ALR and C.J.S. references.—Finding of draft board as evidence of physical condition of one registered, 16 ALR 247.

Admissibility of report of public officer or employee on cause of or responsibility for injury to person or damage to property, 153 ALR 163.

32 C.J.S. Evidence §§ 649 to 675.

Sec. 09.25.120. Inspection and copying of public records. Every person has a right to inspect a public writing or record in the state, including public writings and records in recorders' offices except (1) records of vital statistics and adoption proceedings which shall be treated in the manner required by AS 18.50.010—18.50.380; (2) records pertaining to juveniles; (3) medical and related public health records; (4) records required to be kept confidential by a federal law or regulation or by state law. Every public officer having the custody of records not included in the exceptions shall permit the inspection, and give on demand and on payment of the legal fees therefor a certified copy of the writing or record, and the copy shall in all cases be evidence of the original. Recorders shall permit memoranda, transcripts, and copies of the public writings and records in their offices to be made by photography or otherwise for the purpose of examining titles to real estate described in the public writings and records, making abstracts of title or guaranteeing or insuring the titles of the real estate, or building and maintaining title and abstract plants; and shall furnish proper and reasonable facilities to persons having lawful occasion for access to the public writings and records for those purposes, subject to reasonable rules and regulations, in conformity to the direction of the court, as are necessary for the protection of the writings and records and to prevent interference with the regular discharge of the duties of the recorders and their employees. (§ 3.23 ch 101 SLA 1962)

Cross references.—See Civ. R. 44-(b)(4). As to management and preservation of public records, see AS 40.21.

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Sec. 09.25.125. Enforcement: Injunctive relief. A person having custody or control of a public record who obstructs or attempts to obstruct, or a person not having custody or control who aids or abets another person in obstructing or attempting to obstruct, the inspection of a public record subject to inspection under AS 09.25.110 or 09.25.120 may be enjoined by the superior court from obstructing, or attempting to obstruct, the inspection of public records subject to inspection under AS 09.25.110 or 09.25.120. (§ 1 ch 74 SLA 1975)

Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	41-1750 41-2203.A.3		X	X
2. Privacy and Security Council	41-2203		X	
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	41-2204.6 41-1750.B.5		X	X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	41-1750.G 41-1750.B.7			X X
3.12 Authorizes to Private Sector				
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	41-2204.6 41-1750.B.5		X	X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	41-1750.G 41-1750.B.7			X X
3.22 Authorizes to Private Sector				
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	41-2204.6 41-1750.B.5		X	X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	41-1750.G 41-1750.B.7			X X
3.32 Authorizes to Private Sector				
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	41-1750.B.9			X
5. Right to Challenge	41-2203.A.5		X	
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information				
8. Purging Conviction Information	8-247			X

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information	13-4051			X
10. Sealing Conviction Information	13-907			X
11. Removal of Disqualifications	13-905 through 912			X
12. Right to State Non-Existence of Record				
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	41-2205.B 41-1751	X	X	
14.2 Auditing Requirements	41-2205.A		X	
14.3 Other Accuracy/Completeness Requirements	Reg. 13-1-02		X	
15. Dedication				
16. Civil Remedies	39-121.02 13-4051.C	X		X
17. Criminal Penalties	41-1750.D			X
18. Public Records	39-121.01	X		
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination	41-1750			X
22. Security				
22.1 Physical (Building) Security				
22.2 Administrative Security				
22.3 Computer Security				
23. Transaction Logs				
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)				
27. FOIA (Excluding CJI)	39-121.01	X		
28. Central State Repository	41-1750.B.6; 41-2205		X	

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Arizona Revised Statutes

§ 41-1750. Criminal identification section; duties; classification

A. There shall be a criminal identification section within the department of public safety.

B. The criminal identification section shall:

1. Procure and maintain records of photographs, descriptions, fingerprints, dispositions and such other information as may be pertinent to all persons who have been arrested for or convicted of a public offense within the state.

2. Collect information concerning the number and nature of offenses known to have been committed in this state, of the legal steps taken in connection therewith, and such other information as shall be useful in the study of crime in the administration of justice.

3. Cooperate with the criminal identification bureaus in other states and with the appropriate agency of the federal government in the exchange of information pertinent to violators of the law. In addition, the criminal identification section shall provide for the rapid exchange of information concerning the commission of crime and the detection of violators of the law, between the criminal justice agencies of this state and its political subdivisions and the criminal justice agencies of other states and of the federal government.

4. Furnish assistance to peace officers throughout the state in crime scene investigation for the detection of latent fingerprints, and in the comparison thereof.

5. Provide information from its records to criminal justice agencies of the federal government, the state or its political subdivisions upon request by the chief officer of such agency or his authorized representative. Such information shall be used only for purposes of the administration of criminal justice.

6. Operate the central repository for the criminal justice information system as required by § 41-2205.

7. Provide criminal history record information to noncriminal justice agencies of the federal government, the state or its political subdivisions upon request by the chief officer of such agency or his authorized representative, for the purpose of evaluating the fitness of prospective employees of such agency. Such information shall be used only for the purpose of such evaluation.

8. Provide criminal history record information to licensing and regulatory agencies of the federal government, the state or its political subdivisions upon request by the chief officer of such agency or his authorized representative, for the purpose of evaluating the fitness of prospective licensees. Such information shall be used only for the purpose of such evaluation.

9. Provide criminal history record information to the subject of such information, or to his attorney at the request of the subject, and when accompanied by proper identification.

C. The chief officers of criminal justice agencies of the state or its political subdivisions shall provide to the criminal identification section such information concerning crimes and persons arrested for or convicted of public offenses within the state as the chief of the criminal identification section, with the approval of the director, shall deem useful for the study or prevention of crime and for the administration of justice.

D. Any person who knowingly releases or procures the release of information held by the criminal identification section other than as provided by this section, or who uses such information for a purpose other than as provided by this section, is guilty of a class 2 misdemeanor.

E. The chief of the criminal identification section may, with the written approval of the director and in the manner prescribed by law, remove and destroy such records as he determines are no longer of value in the detection or prevention of crime.

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F. The chief of the criminal identification section, subject to the approval of the director, shall make and issue rules and regulations relating to the procurement and dissemination of information, in the manner prescribed by law.

G. All noncriminal justice agencies of the federal government, the state or its political subdivisions may receive criminal history record information from the department of public safety criminal identification section pursuant to specific authority granted to that agency by statute, ordinance, or executive order which states the agency's authorization to receive criminal history record information for purposes of employment or licensing, in accordance with subsection F of this section. As amended Laws 1978, Ch. 173, § 11; Laws 1978, Ch. 201, § 743, eff. Oct. 1, 1978.

* * *

§ 13-4051. Entry on records; stipulation; court order

A. Any person who is wrongfully arrested, indicted or otherwise charged for any crime may petition the superior court for entry upon all court records, police records and any other records of any other agency relating to such arrest or indictment a notation that the person has been cleared.

B. After a hearing on the petition, if the judge believes that justice will be served by such entry, the judge shall issue the order requiring the entry that the person has been cleared on such records, with accompanying justification therefor, and shall cause a copy of such order to be delivered to all law enforcement agencies and courts. The order shall further require that all law enforcement agencies and courts shall not release copies of such records to any person except upon order of the court.

C. Any person who has notice of such order and fails to comply with the court order issued pursuant to this section shall be liable to the person for damages from such failure.

Added as § 13–1761 by Laws 1973, Ch. 126, § 3. As amended Laws 1976, Ch. 154, § 2. Renumbered as § 13–4051 by Laws 1977, Ch. 142, § 163, eff. Oct. 1, 1978.

Historical Note

The 1976 amendment deleted "upon obtaining a written statement from the prosecuting attorney that such person will not be prosecuted in connection with such crime," preceding "petition the superior court" in subsec. A.

Library References

Criminal Law ⇐1222.

C.J.S. Criminal Law § 2008 et seq.

Notes of Decisions

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* * *

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been finally and unconditionally released would still have no right to vote, carry a pistol, or serve on a jury, but one who has been pardoned would have such "rights" plus any others of which he might have been deprived because of his status as a convicted felon. Id.

Person convicted of crime and serving time in state prison could be issued an Arizona driver's license. Op.Atty.Gen. No.63-35-L.

4. Workmen's compensation

Right to workmen's compensation and accident benefits was not forfeited or suspended during period of prison confinement of claimant serving sentence less than life, and confinement did not extend time within which to process and protect rights. Bearden v. Industrial Commission (1971) 14 Ariz.App. 336, 483 P.2d 568.

Provision of § 13-1653 (repealed; now this section) permitting persons sentenced to imprisonment to testify in a criminal proceeding did not render testimony which was given by coemployee who had been convicted of employee's murder and sentenced to life term in state prison and which showed that employee had abandoned his employment and engaged in personal activity at time of his death incompetent by implication or application of doctrine of expressio unius est exclusio alterius in proceeding brought before the Industrial Commission by widow to recover death benefits, in view of provisions of sections 12-2201, 23-941, 23-942 which dispelled any such implication. Carlson v. Industrial Commission (1971) 14 Ariz.App. 278, 482 P.2d 887.

Claimant's status as a trusty working on a prison farm outside the walls of the state prison, for which he volunteered and received special treatment, was not sufficient to imply a "contract of hire" within scope of § 23-901, and claimant's injury sustained when he came in contact with electrical wires was noncompensable. Watson v. Industrial Commission (1966) 100 Ariz. 327, 414 P.2d 144.

§ 13-905. Restoration of civil rights; persons completing probation

A. A person who has been convicted of two or more felonies whose period of probation has been completed may have any civil rights which were lost or suspended by his felony conviction restored by the judge who discharges him at the end of the term of probation.

B. Upon proper application, a person who has been discharged from probation either prior to or after adoption of this chapter may have any civil rights which were lost or suspended by his felony conviction restored by the superior court judge by whom the person was sentenced or his successors in office from the county in which he was originally convicted. The clerk of such superior court shall have the responsibility for processing the application upon request of the person involved or his attorney. The superior court shall cause a copy of the application to be served upon the county attorney.

Added as § 13-1742 by Laws 1970, Ch. 221, § 1, as amended Laws 1971, Ch. 159, § 1. Renumbered as § 13-805 and amended by Laws 1977, Ch. 142, § 50, eff. Oct. 1, 1978. Renumbered as § 13-905 by Laws 1978, Ch. 201, § 116, eff. Oct. 1, 1978.

Historical Note

Former § 13-905 was transferred and renumbered as § 13-709 by Laws 1978, Ch. 201, § 104; see italicized note preceding § 13-901.

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Library References

Civil Rights ⇐1, 12.

C.J.S. Civil Rights §§ 1 et seq., 84 to 86, 197 to 199.

Notes of Decisions

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1. In general

Under this section, superior court clerk must, in absence of prospective applicant's attorney, receive request from prospective applicant, explain to him the procedure, provide him with form or at least minimum information needed to file a proper application, and then process the application; after receiving proper application and insuring that it is proper, clerk should record the filing, make copy of application for applicant, cause copy of application to be served upon county attorney, set application for hearing date, and continue to receive and record all other papers filed in the matter. Op.Atty.Gen.No.71-41.

2. Application

A proper application within this section will contain name of applicant, address, phone number, attorney, if any, date of conviction, substance of conviction, date of sentencing, sentencing court and judge, date of commencement of probation, date of termination of probation, date of court order terminating probation and prayer for restoration of civil rights. Op.Atty.Gen.No.71-41.

3. Jurisdiction

City courts and justice of the peace courts have no jurisdiction to rule on either a petition for restoration of civil rights or a motion to withdraw a guilty plea or to set aside a verdict pursuant to the provisions of § 13-1741 et seq. (now this chapter). Op.Atty.Gen.No.72-19-L.

§ 13-906. Applications by persons discharged from prison

A. Upon proper application, a person who has been convicted of two or more felonies who has received an absolute discharge from imprisonment may have any civil rights which were lost or suspended by his conviction restored by the superior court judge by whom the person was sentenced or his successors in office from the county in which he was originally sentenced.

B. A person who is subject to the provisions of subsection A may file, no sooner than two years from the date of his absolute discharge, an application for restoration of civil rights that shall be accompanied by a certificate of absolute discharge from the director of the department of corrections. The clerk of the superior court that sentenced the applicant shall have the responsibility for processing applications for restoration of civil rights upon request of the person involved, his attorney or a representative of the state department of corrections. The superior court shall cause a copy of the application to be served upon the county attorney.

Added as § 13-1743 by Laws 1970, Ch. 221, § 1. As amended Laws 1971, Ch. 159, § 2. Renumbered as § 13-806 and amended by Laws 1977, Ch.

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142, § 51, eff. Oct. 1, 1978. Renumbered as § 13–906 by Laws 1978, Ch. 201, § 116, eff. Oct. 1, 1978.

The 1971 amendment inserted, in the the first sentence of subsec. B, that which precedes "an application" and inserted "that" ; substituted a reference to the superior court clerk for a reference to the county attorney in the second sentence of subsec. B, and added the third sentence of subsec. B.

The 1977 amendment inserted "who has been convicted of two or more felonies" in subsec. A.

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1. In general

Defendant who has served a prison sentence may not subsequently have his plea of guilty or a verdict of guilty set aside. State v. Brandt (1973) 19 Ariz. 172, 505 P.2d 1063.

2. Jurisdiction

City courts and justice of the peace courts have no jurisdiction to rule on either a petition for restoration of civil rights or a motion to withdraw a guilty plea or to set aside a verdict pursuant to the provisions of § 13–1741 et seq. (now this chapter). Op.Atty.Gen.No.72–19–L.

3. Review

Appeal of defendant from an order revoking probation and imposing a prison sentence was not rendered moot by defendant's completion of service of the sentence. State v. Brandt (1973) 19 Ariz.App. 172, 505 P.2d 1063.

§ 13–907. Setting aside judgment of convicted person upon discharge; making of application; release from disabilities; exceptions

Every person convicted of a criminal offense other than a violation of § 28–473, the provisions of title 28, chapter 6,[1] or a violation of any local ordinance relating to stopping, standing or operation of a vehicle, but nevertheless including a violation of §§ 28–661, 28–692, 28–692.02, 28–693 or any local ordinance relating to the same subject matter of such sections, may upon fulfillment of the conditions of probation or sentence and discharge by the court, apply to the judge, justice of the peace or magistrate who pronounced sentence or imposed probation or such judge, justice of the peace or magistrate's successor in office to have the judgment of guilt set aside. The convicted person shall be informed of this right at the time of discharge. The application to set aside the judgment may be made by the convicted person, by his attorney or probation officer authorized in writing. If the judge, justice of the peace or magistrate grants the application, the judge, justice of the peace or magistrate shall set aside the judgment of guilt, dismiss the accusations or information and order that the person be released from all penalties and disabilities resulting from the conviction other than those imposed by the department of transporta-

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tion pursuant to § 28–445 or 28–446, and except that the conviction may be pleaded and proved in any subsequent prosecution of such person by the state or any of its subdivisions for any offense or used by the department of transportation in enforcing the provisions of § 28–445 or 28–446 as if the judgment of guilt had not been set aside.

Added as § 13–1744 by Laws 1976, Ch. 111, § 10. Renumbered as § 13–807 by Laws 1977, Ch. 142, § 52, eff. Oct. 1, 1978. As amended by Laws 1978, Ch. 65, § 1, eff. May 23, 1978. Renumbered as § 13–907 by Laws 1978, Ch. 201, § 116, eff. Oct. 1, 1978.

[1] Section 28–601 et seq.

Historical Note

Laws 1978, Ch. 65, § 1, inserted "§ 28–473" and deleted "28–692.01" in the first sentence, and in the final sentence inserted "other than those imposed by the department of transportation pursuant to § 28–445 or 28–446, and", "by the state or any of its subdivisions", and "or used by the department of transportation in enforcing the provisions of § 28–445 or 28–446".

1978 Reviser's Note:

Laws 1977, Ch. 142, section 52 transferred section 13–1744 to title 13, chapter 8 and renumbered the section as section 13–807 effective October 1, 1978. Laws 1978, Ch. 65, section 1 amended section 13–1744, effective May 23, 1978. Pursuant to authority of section 41–1304.02, this section as amended by Laws 1978, Ch. 65, section 1, has been numbered as section 13–807. Subsequently section 13–807 was renumbered as section 13–907 by Laws 1978, Ch. 201, section 116, effective October 1, 1978.

Cross References

Restoration of civil rights following criminal conviction, see Rules Cr.Proc. Rule 29.1 et seq.

Library References

Criminal Law ⇐998(1). C.J.S. Criminal Law § 1605(1) et seq.

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1. In general

Under § 13–919 (repealed; see, now, § 13–3102) making it unlawful for person convicted of certain specified crimes of violence to possess pistol unless he had been pardoned or had by law regained full status as citizen, phrase "full status as a citizen" was not rendered vague by subsequent statute and rule (section 13–1741 et seq. now this chapter, and Criminal Procedure Rule 29.1) setting forth procedure for restoration of civil rights. State v. Harmon (1975) 25 Ariz.App. 137, 541 P.2d 600, certiorari denied 96 S.Ct. 1681, 425 U.S. 942, 48 L.Ed.2d 185.

Section 13–1741 et seq. (now this chapter) relating to restoration of civil rights of convicted person did not apply to misdemeanor convictions. State v. Grant (1975) 24 Ariz.App. 201, 537 P.2d 38, adopted 112 Ariz. 270, 540 P.2d 1251.

Restoration of civil rights is creature of statute and trial court had no inherent power to grant restoration order. Id.

Petitioner was not entitled to file late appeal from conviction where after pro-

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nouncing sentence trial court advised petitioner of his right to appeal and to court-appointed counsel therefore and petitioner allegedly did not appeal within prescribed time because he believed from a discussion with his probation officer that his conviction would eventually be removed from his record if he fulfilled the terms of his probation. State v. Stice (1975) 23 Ariz.App. 97, 530 P.2d 1130, on reconsideration 24 Ariz.App. 516, 540 P.2d 135.

Probationer may, after completion of his probation period, move the court to set aside his plea of guilty or a verdict of guilty and, in addition, have his civil rights reinstated. State v. Brandt (1973) 19 Ariz. 172, 505 P.2d 1063.

City courts and justice of the peace courts had no jurisdiction to rule on either a petition for restoration of civil rights or a motion to withdraw a guilty plea or to set aside a verdict pursuant to the provisions of § 13–1741 et seq. (now this chapter). Op.Atty.Gen.No. 72-19–L.

2. City and police courts

Superior court exceeded its jurisdiction by ordering establishment of procedures in city court whereby successful misdemeanor probationers could obtain relief under this section establishing right of discharged probationers to withdraw guilty pleas or seek to vacate verdicts of conviction which resulted in their being placed on probation. State ex rel. Purcell v. Superior Court In and For Maricopa County (1976) 112 Ariz. 521, 544 P.2d 203.

3. Expungement of records

There is no expungement of records in regard to criminal identification, and, as a matter of fact, court orders to expunge should not be honored; any such order should be brought to attorney general's attention so that they may be appealed, based on lack of statutory authority to issue expungement orders. Op.Atty.Gen.No.73–3–L.

4. Review

If accused, who was convicted of three counts of misdemeanor manslaughter, was given erroneous advice by probation officer with regard to this section, which relates to setting aside of a conviction and restoration of civil rights and which does not apply to misdemeanor convictions, and if, as result of such advice, accused decided to forego his appeal rights, he was entitled to take a delayed appeal. State v. Stice (1975) 24 Ariz.App. 516, 540 P.2d 135.

Appeal of defendant from an order revoking probation and imposing a prison sentence was not rendered moot by defendant's completion of service of the sentence. State v. Brandt (1973) 19 Ariz.App. 172, 505 P.2d 1063.

§ 13–908. Restoration of civil rights in the discretion of the superior court judge

Except as provided in § 13–912, the restoration of civil rights and the dismissal of the accusation or information under the provisions of this chapter shall be in the discretion of the superior court judge by whom the person was sentenced or his successor in office.

Added as § 13–1745 by Laws 1970, Ch. 221, § 1. Renumbered as § 13–808 and amended by Laws 1977, Ch. 142, § 53, eff. Oct. 1, 1978. Renumbered as § 13–908 and amended by Laws 1978, Ch. 201, §§ 116, 120, eff. Oct. 1, 1978.

Historical Note

The 1978 amendment substituted "13–912" for "13–812".

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Library References

Convicts ⇐1. C.J.S. Convicts § 1 et seq.

Notes of Decisions

1. Jurisdiction

City courts and justice of the peace courts have no jurisdiction to rule on either a petition for restoration of civil rights or a motion to withdraw a guilty plea or to set aside a verdict pursuant to the provisions of § 13-1741 et seq. (now this chapter). Op.Atty.Gen.No.72-19-L.

§ 13-909. Restoration of civil rights; persons completing probation for federal offense

A. A person who has been convicted of two or more felonies whose period of probation has been completed may have any civil rights which were lost or suspended by his felony conviction in a United States district court restored by the presiding judge of the superior court in the county in which he now resides, upon filing of an affidavit of discharge from the judge who discharged him at the end of the term of probation.

B. Upon proper application, a person who has been discharged from probation either prior to or after adoption of this chapter may have any civil rights which were lost or suspended by his felony conviction restored by an application filed with the clerk of the superior court in the county in which he now resides. The clerk of the superior court shall process the application upon request of the person involved or his attorney.

Added as § 13-1752 by Laws 1971, Ch. 159, § 3. Renumbered as § 13-809 and amended by Laws 1977, Ch. 142, § 54, eff. Oct. 1, 1978. Renumbered as § 13-909 by Laws 1978, Ch. 201, § 116, eff. Oct. 1, 1978.

The 1977 amendment inserted "who has been convicted of two or more felonies" in subsec. A, and substituted "either prior to or after adoption of this chapter" for "prior to the adoption of this article" in subsec. B.

Cross References

Discretion, restoration of civil rights, see § 13-911.

§ 13-910. Applications by persons discharged from federal prison

A. Upon proper application, a person who has been convicted of two or more felonies who has received an absolute discharge from imprisonment in a federal prison may have any civil rights which were lost or suspended by his conviction restored by the presiding judge of the superior court in the county in which he now resides.

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B. A person who is subject to the provisions of subsection A may file, no sooner than two years from the date of his absolute discharge, an application for restoration of civil rights that shall be accompanied by a certificate of absolute discharge from the director of the federal bureau of prisons, unless it is shown to be impossible to obtain such certificate. Such application shall be filed with the clerk of the superior court in the county in which the person now resides and such clerk shall be responsible for processing applications for restoration of civil rights upon request of the person involved or his attorney.

Added as § 13–1753 by Laws 1971, Ch. 159, § 3. Renumbered as § 13–810 and amended by Laws 1977, Ch. 142, § 55, eff. Oct. 1, 1978. Renumbered as § 13–910 by Laws 1978, Ch. 201, § 116, eff. Oct. 1, 1978.

Cross References

Discretion, restoration of civil rights, see § 13–911.

§ 13–911. Restoration of civil rights in the discretion of the presiding judge of the superior court

The restoration of civil rights under provisions of §§ 13–909 or 13–910 is within the discretion of the presiding judge of the superior court in the county in which the person resides.

Added as § 13–1754 by Laws 1971, Ch. 159, § 3. Renumbered as § 13–811 and amended by Laws 1977, Ch. 142, § 56, eff. Oct. 1, 1978. Renumbered as § 13–911 and amended by Laws 1978, Ch. 201, §§ 116, 121, eff. Oct. 1, 1978.

Historical Note

The 1978 amendment substituted "§§ 13–909 or 13–910" for "§§ 13–809 or 13–810".

Former § 13–911, relating to concealed weapons, was repealed by Laws 1977, Ch. 142, § 29, eff. Oct. 1, 1978.

For disposition of the subject matter of sections of the former Criminal Code, see Disposition Table at the front of this volume.

§ 13–912. Restoration of civil rights; automatic for first offenders

Upon completion of the term of probation, or upon absolute discharge from imprisonment, and upon the completion of payment of any fine or restitution imposed, any person who has not previously been convicted of any other felony shall automatically be restored any civil rights which were lost or suspended by the conviction.

Added as § 13–812 by Laws 1977, Ch. 142, § 49, eff. Oct. 1, 1978. Renumbered as § 13–912 by Laws 1978, Ch. 201, § 116, eff. Oct. 1, 1978.

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§ 8-247. Destruction of records

A. On application of a person who has been adjudicated delinquent or incorrigible or on the court's own motion, and after a hearing, the juvenile court shall order the destruction of the files and records, including arrest records, in the proceeding, if the court finds:

1. The person has attained his eighteenth birthday.
2. No proceeding is pending seeking his conviction of a crime.
3. He has been rehabilitated to the satisfaction of the juvenile court.
4. He is not under the jurisdiction of the juvenile court, nor under commitment to the department of corrections from the juvenile court.

B. Reasonable notice of the hearing shall be given to:

1. The county attorney.
2. The authority granting the discharge if the final discharge was from an institution or from parole.

C. When a juvenile who has been adjudicated delinquent or incorrigible has attained his or her twenty-third birthday, the juvenile court may order destruction of files and records, including arrest records if the court finds:

1. There is no pending criminal complaint.
2. The department of corrections has no current jurisdiction.
3. There is no adult criminal record. As amended Laws 1975, Ch. 141, § 3.

Supplementary Index to Notes

In general ½

½. In general

Evidence as to 21-year-old defendant's experience in juvenile justice system from other sources could be considered by sentencing court, even though juvenile court records had been destroyed pursuant to this section when defendant reached age 21 a few months prior to sentencing. State v. Corral (1974) 21 Ariz.App. 520, 521 P.2d 151.

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	5-1101 5-1103			X
2. Privacy and Security Council	5-1103			X
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	5-1102			X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	5-1102			X
3.12 Authorizes to Private Sector				
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector	5-1102			X
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	5-1102			X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	5-1102			X
3.22 Authorizes to Private Sector				
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector	5-1102			X
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	5-1102			X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	5-1102			X
3.32 Authorizes to Private Sector				
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector	5-1102			X
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	5-1102 Reg. Sect. 3	X		X
5. Right to Challenge	5-1102 Reg. Sect. 3,4,5,6	X		X
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information	5-1109			X
8. Purging Conviction Information				

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information	43-1231	X		
11. Removal of Disqualifications	43-1231 43-1233	X X		
12. Right to State Non-Existence of Record				
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	5-1107			X
14.2 Auditing Requirements	5-1112			X
14.3 Other Accuracy/Completeness Requirements				
15. Dedication				
16. Civil Remedies	12-2806			X
17. Criminal Penalties	5-1110 5-1111; 12-2807 43-1235			X X X
18. Public Records	12-2801			X
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security	5-1103			X
22.1 Physical (Building) Security				
22.2 Administrative Security				
22.3 Computer Security				
23. Transaction Logs	Reg. 6,7	X		
24. Training Employees	5-1112			X
25. Listing of Information Systems				
26. FOIA (Including CJI)	12-2801			X
27. FOIA (Excluding CJI)				
28. Central State Repository	5-1102			X

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Arkansas Statutes Annotated
Title 12

CHAPTER 28

FREEDOM OF INFORMATION ACT

SECTION.		SECTION.	
12-2801.	Title of act.	12-2805.	Open public meetings.
12-2802.	Declaration of public policy.	12-2806.	Enforcement.
12-2803.	Definitions.	12-2807.	Penalty.
12-2804.	Examination and copying of public records.		

12-2801. **Title of act.** — This Act [§§ 12-2801 — 12-2807] shall be known and cited as the "Freedom of Information Act" of 1967. [Acts 1967, No. 93, § 1, p. 208.]

12-2802. Declaration of public policy. — It is vital in a democratic society that public business be performed in an open and public manner so that the electors shall be advised of the performance of public officials and of the decisions that are reached in public activity and in making public policy. Toward this end, this act [§§ 12-2801 — 12-2807] is adopted, making it possible for them, or their representatives, to learn and to report fully the activities of their public officials. [Acts 1967, No. 93, § 2, p. 208.]

12-2803. Definitions. — "Public records" are writings, recorded sounds, films, tapes, or data compilations in any form (a) required by law to be kept, or (b) otherwise kept and which constitute a record of the performance or lack of performance of official functions which are or should be carried out by a public official or employee, a governmental agency, or any other agency wholly or partially supported by public funds or expending public funds.

All records maintained in public offices or by public employees within the scope of their employment shall be presumed to be public records. Provided, that compilations, lists, or other aggregations of information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy, are hereby determined to be confidential and shall not be considered to be "public records" within the terms of this Act [§§ 12-2801 — 12-2807], and shall not be supplied to private individuals or organizations.

"Public meetings" are the meetings of any bureau, commission, or agency of the State, or any political subdivision of the State, including municipalities and counties, boards of education, and all other boards, bureaus, commissions or organizations in the State of Arkansas, except grand juries, supported wholly or in part by public funds, or expending public funds. [Acts 1967, No. 93, § 3, p. 208; 1977, No. 652, § 1, p. 1600; 1981, No. 608, § 1, p. —.]

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12-2804. Examination and copying of public records. — Except as otherwise specifically provided herein, by laws now in effect, or laws hereinafter specifically enacted to provide otherwise, all public records shall be open to inspection and copying by any citizen of the State of Arkansas during the regular business hours of the custodian of the records. It is the specific intent of this Section that State income tax returns; medical, scholastic, and adoption records; the site files and records maintained by the Arkansas Historic Preservation Program and the Arkansas Archeological Survey; grand jury minutes; unpublished drafts of judicial or quasi-judicial opinions and decisions; undisclosed investigations by law enforcement agencies of suspected criminal activity; unpublished memoranda, working papers, and correspondence of the Governor, Legislators, Supreme Court Justices, and the Attorney General; documents which are protected from disclosure by order or rule of court; files which, if disclosed, would give advantage to competitors or bidders; and other similar records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of this Act [§§ 12-2801 — 12-2807].

Reasonable access to public records and reasonable comforts and facilities for the full exercise of the right to inspect and copy such records shall not be denied to any citizen.

If a public record is in active use or in storage and, therefore, not available, at the time a citizen asks to examine it, the custodian shall certify this fact in writing to the applicant and set a date and hour within three (3) days, at which time the record will be available for the exercise of the right given by this Act. [Acts 1967, No. 93, § 4, p. 208; 1977, No. 652, § 2, p. 1600.]

12-2805. Open public meetings. — Except as otherwise specifically provided by law, all meetings, formal or informal, special or regular, of the governing bodies of all municipalities, counties, townships, and school districts, and all boards, bureaus, commissions, or organizations of the State of Arkansas, except Grand Juries, supported wholly or in part by public funds, or expending public funds, shall be public meetings.

The time and place of each regular meeting shall be furnished to anyone who requests the information.

In the event of emergency, or special meetings the person calling such a meeting shall notify the representatives of the newspapers, radio stations and television stations, if any, located in the county in which the meeting is to be held and which have requested to be so notified of such emergency or special meetings, of the time, place and date at least two (2) hours before such a meeting takes place in order that the public shall have representatives at the meeting.

Executive sessions will be permitted only for the purpose of considering employment, appointment, promotion, demotion, disciplining or resignation of any public officer or employee.

(a) Only the person holding the top administrative position in the public agency, department or office involved; the immediate supervisor of the employee involved; and the employee may be present at the executive session when so requested by the governing body, board, commission or other public body holding the executive session.

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(b) Any person being interviewed for the top administrative position in the public agency, department, or office involved may be present at the executive session when so requested by the governing board, commission or other public body holding the executive session.

Executive sessions must never be called for the purpose of defeating the reason or the spirit of the Freedom of Information Act.

No resolution, ordinance, rule, contract, regulation or motion considered or arrived at in executive session will be legal unless following the executive session, the public body reconvenes in public session and presents and votes on such resolution, ordinance, rule, contract, regulation, or motion. [Acts 1967, No. 93, § 5, p. 208; 1975 (Extended Sess., 1976), No. 1201, § 1, p. 2915.]

12-2806. **Enforcement.** — Any citizen denied the rights granted to him by this Act [§§ 12-2801 — 12-2807] may appeal immediately from such denial to the Pulaski Circuit Court, or to the Circuit Court of the residence of the aggrieved party, if an agency of the State is involved, or to any of the Circuit Courts of the appropriate judicial districts when an agency of a county, municipality, township or school district, or a private organization supported by or expending public funds is involved. Upon written application of the person denied the rights provided for in this Act, or any interested party, it shall be mandatory upon the Circuit Court having jurisdiction, to fix and assess a day the petition is to be heard within seven [7] days of the date of the application of the petitioner, and to hear and determine the case. Those who refuse to comply with the orders of the court shall be found guilty of contempt of court. [Acts 1967, No. 93, § 6, p. 208.]

Arkansas Statutes Annotated
Chapter 11
Arkansas Crime Information Center

5-1101. **Criminal justice and highway safety information center — Creation — Appointment of administrator.** — There is hereby created a Criminal Justice and Highway Safety Information Center, under the supervision of a Supervisory Board established by this Act [§§ 5-1101—5-1115], and the Department of Public Safety. This Center shall consist of an Administrator of Criminal Justice and Highway Safety Information and such other staff under the general supervision of the Administrator as may be necessary to administer the services of this Act, subject to the approval of funds authorized by the General Assembly. The Supervisory Board shall name the Administrator of the Center with the approval of the Director of the Department of Public Safety. [Acts 1971, No. 286, § 1, p. 674; 1975, No. 742, § 1, p. —.]

5-1101.1. **Name changed to crime information center.** — Hereafter the Criminal Justice and Highway Safety Information Center, as authorized by Act 286 of 1971, as amended, the same being Arkansas Statute 5-1101, shall be designated and known as the Arkansas Crime Information Center, and

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that all powers, functions and duties of the Criminal Justice and Highway Safety Information Center shall be performed by the Arkansas Crime Information Center. [Acts 1979, No. 375, § 1, p. —.]

5-1102. Maintenance and operation of criminal justice and highway safety information system — Other duties of center — Availability of criminal record. — This Center shall be responsible for providing for the maintenance and operation of the computer-based Criminal Justice and Highway Safety Information System. The use of this System is restricted to serving the informational needs of police, courts, correction and highway safety agencies through a communications network connecting state, county, and local authorities to a centralized state depository of information. The information to be stored in the Criminal Justice and Highway Safety Information Center under the authority of this Act [§§ 5-1101—5-1115] shall be restricted to records of outstanding warrants for arrest, felony informations and indictments pending in Circuit Court, misdemeanor informations and indictments to the extent provided in this Section pending in Municipal and Circuit Courts, commitments to the penitentiary and other correctional agencies, felony convictions, persons on felony parole or probation, stolen property, moving traffic violations, traffic accidents, drivers licenses, vehicle registration, records to prevent misidentification of persons and convictions for the following specified misdemeanors:

(a) All misdemeanor crimes wherein violence is an element of the offense.

(b) All misdemeanor crimes involving the theft of property.

(c) All misdemeanor crimes involving the use, abuse, misuse or possession of dangerous drugs or narcotics.

(d) Driving while under the influence of drugs or intoxicants.

It is the intent of the General Assembly in this legislation that the Center shall maintain only the specified records on persons and shall not maintain any additional records on persons without specific statutory authorization from the General Assembly.

The Center shall collect data and compile statistics on the nature and extent of crime and highway safety problems in Arkansas and compile other data related to planning for and operating criminal justice and highway safety agencies, provided that such statistics do not identify persons. The Center shall also periodically publish statistics that do not identify persons and report such information to the Governor, the General Assembly, Federal, State and local criminal agencies, and the general public.

The Center, at the direction of the Supervisory Board, is hereby authorized to design and administer a Uniform Crime Reporting program, uniform records systems, and a criminal offender tracking program (Offender Based Transaction Statistics), to be used by criminal justice agencies for reporting the authorized information under this Act. The Center shall also provide all standard forms and provide for the instruction of participants in the use of such forms and related standard record systems.

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The Center shall make criminal records on person [persons] available only to criminal justice agencies in their official capacity, to regulatory agencies with specific statutory authority of access, and to any person or his attorney, who has reason to believe that a criminal history record is being kept on him, or wherein the criminal defendant is charged with either a misdemeanor or felony. Upon the application of the person or his attorney, it shall be mandatory, upon proper and sufficient identification of the person, for the Criminal Justice and Highway Safety Information Center to make available to said person or his attorney any records on the person making said application. The Supervisory Board shall establish regulations and policies to carry out the review and challenge procedures in accordance with this Act. [Acts 1971, No. 286, § 2, p. 674; 1975, No. 742, § 2, p. —.]

5-1102.1. Coordination with national crime control information systems. — The Criminal Justice and Highway Safety Information Center shall be the central access and control agency for Arkansas' input, retrieval, and exchange of criminal justice information in the National Crime Information Center, or its successor, and National Law Enforcement Telecommunications System, or its successor, and shall be responsible for the coordination of all Arkansas user agencies with the National Crime Information Center and the National Law Enforcement Telecommunications System. [Acts 1979, No. 124, § 1, p. —.]

5-1102.2. Designation of control terminal officer. — The Director of the Criminal Justice and Highway Safety Information Center, or his designee, shall serve as the National Crime Information Center control terminal officer and the National Law Enforcement Telecommunications System representative. [Acts 1979, No. 124, § 2, p. —.]

5-1103. Supervisory board — Duties. — There is hereby created a Supervisory Board for the Criminal Justice and Highway Safety Information Center. The duties and responsibilities of this Board are to:

(a) Maintain and operate the Criminal Justice and Highway Safety Information Center.

(b) Provide that the information obtained by this Act [§§ 5-1101—5-1115] shall be restricted to the items specified in this Act and shall so administer the Center so as not to accumulate any information or distribute any information that is not specifically approved in this Act.

(c) Provide for adequate security safeguards to ensure that the data available through this system is used only by properly authorized persons and agencies.

(d) Provide for uniform reporting and tracking systems to report data authorized by this Act. Standard forms and procedures for reporting such authorized data under this Act shall be prescribed by the Board.

(e) Establish regulations and policies as may be necessary for the efficient and effective use and operation of the Information Center under the limitations imposed by the terms of this Act.

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(f) Provide for the reporting of authorized information under the limitations of this Act to the United States Department of Justice under its national system of crime reporting.

(g) Provide for research and development activities that will encourage the application of advanced technology, including the development of prototype systems and procedures, the development of plans for the implementing of these prototypes, and the development of technological expertise which can provide assistance in the application of technology in record and communication systems in Arkansas. [Acts 1971, No. 286, § 3, p. 674; 1975, No. 742, § 3, p. —.]

5-1104. Composition of board — Expenses. — The supervisory board shall consist of twelve (12) members:

(a) the Attorney General or one [1] of his assistants.

(b) the Chief Justice of the Supreme Court or his designated agent.

(c) a member designated by the Arkansas Association of Prosecuting Attorneys.

(d) a member designated by the Arkansas Sheriffs Association.

(e) a member designated by the Arkansas Association of Municipal Judges.

(f) a member designated by the President of the Arkansas Bar Association who is regularly engaged in criminal defense work.

(g) a citizen of the State of Arkansas to be appointed by the Governor.

(h) a member of the General Assembly appointed by the Governor.

(i) a member designated by the Arkansas Municipal Police Association.

(j) the Director of the Department of Correction or his designated agent.

(k) a member designated by the Arkansas Association of Chiefs of Police.

(l) a member designated by the Association of Arkansas Counties.

The Director of the Department of Public Safety or a member of his staff designated by him, shall serve as an ex officio member.

No member shall continue to serve on the supervisory board when the member no longer officially represents the function for which the member was appointed, except the citizen appointed by the Governor, who shall serve for a period of four (4) years.

Members of the board shall serve without compensation but within the limits of funds available, shall be entitled to reasonable reimbursement all reasonable expenses occurred [incurred] in the discharge of their duties. [Acts 1971, No. 286, § 4, p. 674; 1975, No. 742, § 4, p. 2045; 1977, No. 542, § 1, p. 1347.]

5-1105. Board meetings — Quorum — Removal of member — Rules and regulations. — The Supervisory Board shall meet at such times and places as it shall deem appropriate. A majority of the Board shall constitute a quorum for transacting any business of the Board.

The Board may, for cause, remove any Board member and shall notify the Governor of such removal and reason therefor.

The Board shall establish its own rules and regulations for performance of the responsibilities charged to the Board herein. [Acts 1971, No. 286, § 5, p. 674; 1975, No. 742, § 5, p. —.]

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5-1106. Data —Control of — Continued use of existing facilities, systems personnel, networks and operations. — All data files and computer programs making up the Criminal Justice and Highway Safety Information System, in accordance with this Act [§§ 5-1101 — 5-1115], shall be under the control and jurisdiction of the Supervisory Board.

The Administrator and the Supervisory Board of the Center shall make arrangements for the continued use of existing State computer facilities, computer systems and programming personnel, communications networks wherever feasible and practical. [Acts 1971, No. 286, § 6, p. 674; 1975, No. 742, § 6, p. —.]

5-1107. Duty to furnish data. — It shall be the duty of all Sheriffs, Ch of Police, City Marshals, Correction officials, Prosecuting Attorneys, Court Clerks, and other State, county and local officials and agencies so directed to furnish the Center all data required by this Act [§§ 5-1101 — 5-1115]. Such data shall be furnished the Center in a manner prescribed by the Supervisory Board. [Acts 1971, No. 286, § 7, p. 674; 1975, No. 742, § 7, p. —.]

5-1108. Invasion of privacy prohibited. — Nothing in this Act [§§ 5-1101 — 5-1115] shall be construed so as to give authority to any person, agency or corporation or other legal entity to invade the privacy of any citizen as defined by the General Assembly or the courts other than to the extent provided in this Act. [Acts 1971, No. 286, § 8, p. 674.]

5-1109. Duty to purge files following acquittal or dismissal of charges. — The Center shall, on or before the first day of January each year following the enactment of this Act [§§ 5-1101 — 5-1115], purge its files of all records of a person relating to a crime wherein the person has been acquitted or the arges dismissed. [Acts 1971, No. 286, § 9, p. 674.]

5-1110. Wilful release or disclosure to unauthorized person — Felony — Penalty. — Every person who shall wilfully release or disclose to any unauthorized person any information authorized to be maintained and collected under this Act [§§ 5-1101 — 5-1115] and any person who wilfully obtains said information for purposes not specified by this Act shall be deemed guilty of a felony and upon conviction shall be punished by a fine not exceeding five thousand dollars ($5,000), and by imprisonment in the state penitentiary for not exceeding three (3) years. [Acts 1971, No. 286, § 10, p. 674; 1975, No. 742, § 9, p. —.]

5-1111. Violation of law — Misdemeanor — Penalty. — Any Sheriff, Chief of Police, City Marshal, Correction official, Prosecuting Attorney, Court Clerk, or other State, county and local official who shall wilfully fail to comply with the provisions of this Act [§§ 5-1101 — 5-1115], or any regulation issued by the Supervisory Board carrying out the provisions of this Act, shall be found guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding $500. [Acts 1975, No. 742, § 8, p. —.]

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5-1112. Special information services agents — Duties. — To insure the accuracy, timeliness and completeness of all records and information as prescribed by this Act [§§ 5-1101 — 5-1115], the Administrator shall appoint Special Information Services Agents, who after proper and sufficient security clearances and training, shall be commissioned to do monitoring and auditing of all records and information as defined by this Act, and other duties as may be prescribed by the Supervisory Board. [Acts 1975, No. 742, § 10, p. —.]

Arkansas Statutes Annotated
Title 16

CHAPTER 8

[redacted]

SECTION.		SECTION.	
16-801.	Short title.	16-806.	Rights of subjects of information.
16-802.	Legislative intent.	16-807.	Use of social security number.
16-803.	Definitions.	16-808.	Penalties.
16-804.	Arkansas information practices board.	16-809.	Common law.
16-805.	Local government.	16-810.	Relation to other acts.

16-801. Short title. — This Act [§§ 16-801 — 16-810] shall be known and may be cited as the "Information Practices Act." [Acts 1977, No. 236, § 1, p. —.]

Compiler's Notes. This act has been substituted for Acts 1975, No. 730, §§ 1-14, which was almost identical to and is deemed to be superseded by the present act.

Cross-References. "Freedom of Information Act," §§ 12-2801 — 12-2807.

16-802. Legislative intent. — (a) The Arkansas General Assembly finds and declares:

(1) That the use of personal information collected, stored, or disseminated by government for purposes other than those purposes to which a person knowingly consents can seriously endanger a person's right to privacy and confidentiality.

(2) That government information collection methods are not limited to State political subdivision boundaries and, therefore, it is necessary to establish a unified statewide program for the regulation of governmental information collection practices and to cooperate fully with other states and with agencies of the government of the United States in regulating such information collection practices.

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(3) That in order to increase participation of persons in the prevention and correction of unfair information practices, opportunity for hearing and remedies must be provided.

(4) That in order to insure that information collected, stored and disseminated by government about persons is consistent with fair information practices while safe-guarding the interests of the persons and allowing the State and other governmental subdivisions to exercise their proper powers, a definition of rights and responsibilities must be established.

(b) The purpose of this Act [§§ 16-801 — 16-810] is to insure safeguards for personal privacy from government recordkeeping organizations by adherence to the following principles of information practice:

(1) There should be no personal information systems whose existence is secret.

(2) Information should not be collected unless the need for it has been clearly established in advance.

(3) Information should be appropriate and relevant to the purpose for which it has been collected.

(4) Information should not be obtained by fraudulent or unfair means.

(5) Information should not be used unless it is accurate and current.

(6) There should be a prescribed procedure for an individual to know the existence of information stored about him, the purpose for which it has been recorded, particulars about its use and dissemination, and to examine that information.

(7) There should be a clearly prescribed procedure for an individual to correct, erase, or amend inaccurate, obsolete, or irrelevant information.

(8) Any government organization collecting, maintaining, using, or disseminating personal information should assure its reliability and take precautions to prevent its misuse.

(9) There should be a clearly prescribed procedure for an individual to prevent personal information collected for one purpose from being used for another purpose without his consent.

(10) State and Local Government should not collect personal information except as expressly authorized by law. [Acts 1977, No. 236, § 2, p. —.]

16-803. Definitions. — As used by this Act [§§ 16-801 — 16-810], unless the context otherwise requires, the following words and phrases shall have the meaning ascribed to them in this section:

(a) "Act" is the Arkansas Information Practices Act.

(b) "Board" is the Arkansas Information Practices Board created by this Act.

(c) "Individual" is any man, woman or child.

(d) "Person" is any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representatives or agent.

(e) "Personal information" is any information that by some specific means of identification, including but not limited to any name, number, description, finger or voice print or picture, and including any combination

of such characters, it is possible to identify with reasonable certainty the person to whom such information pertains.

(f) "Personal information system" is any method by which personal information is collected, stored, or disseminated by any agency of this State government, or by any local government or other political subdivision of this State, but does not include any system for the collection, storage or dissemination of data specifically obtained for use by criminal justice agencies.

(g) "Responsible authority" at the State level means any office established by law as the body responsible for the collection and use of any set of data on persons or summary data. "Responsible authority" in any political subdivision means the person designated by the governing body of that political subdivision, unless otherwise provided by law. With respect to statewide systems, those involving one or more state agencies and one or more political subdivisions, "responsible authority" means the state official involved, or if more than one state official, the state official designated by the board.

(h) "File" is the point of collection of personal identifiable information.

(i) "Purge" is the physical destruction of files, records, or information.

(j) "Need to know" is the necessity of the person who wishes to collect, store, or disseminate personal information for obtaining the specific information.

(k) "Political subdivision" means all cities or counties in this State and any board, agency, or other entity of state, city, or county government except local school districts.

(l) "Machine-accessible" means recorded on magnetic tape, magnetic disk, magnetic drum, punched card, optically scannable paper or film, punched paper tape, or any other medium by means of which information can be communicated to data processing machines. [Acts 1977, No. 236, § 3, p. —.]

16-804. Arkansas information practices board. — (a) There is established an Information Practices Board. The Board shall be composed of the Attorney General, who shall be Chairman of the Board; and the Director of the Department of Finance and Administration (or his designee), who shall serve ex-officio; a County Judge, and a Mayor and three [3] members of the public who shall be appointed by the Governor subject to confirmation by the Senate. The first County Judge appointed and two [2] of the three [3] public members shall be appointed to one (1) year terms. Their successors and the other appointed members shall be appointed to two (2) year terms and shall serve until their successors are duly appointed and qualified.

(b) The Board shall appoint a Director and such additional staff as may be necessary to carry out its responsibilities under this Act [§§ 16-801 — 16-810].

(c) The Board shall meet at least once every three [3] months, and each appointed member of the Board shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of his duties.

(d) The Board shall collect and disseminate such information and acquire such technical data as may be required to carry out the purposes of this Act, including ascertainment of the routine practices and security procedures of personal information systems in the collection, storage or dissemination of personal information.

(e) The Board may require the submission of complete outlines or plans of personal information systems from responsible authorities and the submission of such reports regarding known or alleged violations of the Act or of regulations thereunder, as may be necessary for purposes of this Act.

(f) The Board shall prescribe a program of continuing and regular inspection of personal information systems in order to assure that information practices are in compliance with this Act and regulations adopted thereunder.

(g) The Board shall investigate alleged violations of this Act or of regulations adopted thereunder.

(h) The Board, pursuant to the Administrative Procedures Act [§§ 5-701 — 5-715], shall adopt regulations to promote security, confidentiality and privacy in personal information systems, consistent with the purpose of this Act. Without limiting the generality of this authority, such regulation shall prescribe:

(1) limits of authority and responsibility for all persons with access to personal information systems or any part thereof;

(2) methods for obtaining advice and opinions with regard to requirements of law in the regulating of security, confidentiality and privacy in personal information systems;

(3) policies and procedures to insure the security of personal information systems including the mechanics, personnel, processing of information, site design and access;

(4) standards, over and above those required by normal civil service, of conduct, employment and discipline for responsible authorities and all other persons with access to personal information systems or any part thereof;

(5) standards for the need to know to be utilized by responsible authorities in determining what types of information may be collected, stored and disseminated;

(6) standards for direct and indirect access to personal information systems;

(7) standards and procedures to assure the prompt and complete purging of obsolete, inaccurate or unnecessary personal information from personal information systems;

(8) a continuing program of external and internal auditing and verification to assure the accuracy and completeness of personal information;

(9) standards governing interagency use of files as long as such use is not in violation of other statutory requirements, this Act [§§ 16-801 — 16-810] or regulations adopted thereunder;

(10) standards for exempting certain files from the coverage of this Act, such as telephone number lists, mailing lists, etc., intended for normal office use.

(i) The Board shall have the duty to represent the State of Arkansas in any and all matters pertaining to plans, procedures or negotiations for interstate compacts or other governmental arrangements relating to the regulation of personal information systems or otherwise relating to the protection of the person's right of privacy.

(j) The Board shall have the authority to accept, receive and administer on behalf of the State any grants, gifts, loans or other funds made available to the State from any source for purposes of this Act or other related privacy protection activities, surveys or programs, subject to the several statutes and procedures of this State.

(k) On or before December 1 of each year, the Board shall prepare a report, or update of the previous year's report, to the Legislature and the Governor. Summaries of the report shall be available to the public at a nominal cost. The report shall contain to the extent feasible at least the following information:

(1) a complete listing of all personal information systems which are kept by the State, its local governments and political subdivisions, a description of the information contained therein, and the reason that the information is kept;

(2) a statement of which types of personal information in the Board's opinion are public records as defined by law and which types of information re confidential;

(3) the title, name, and address of the responsible authority for the system and for each file and associated procedures:

(i) the categories and number of persons in each category on whom information is or is expected to be maintained;

(ii) the categories of information maintained, or to be maintained, indicating which categories are or will be stored in machine-accessible files;

(iii) the categories of information sources;

(iv) a description of all types of use made of information, indicating those involving machine-accessible files, and including all classes of users;

(v) the responsible authority's and the Board's policies and practices regarding information storage, duration of retention of information, and disposal thereof;

(vi) a description of the provisions for maintaining the integrity of the information pursuant to this Act [§§ 16-801 — 16-810] and the regulations adopted thereunder; and

(vii) the procedures pursuant to this Act and the regulation [regulations] adopted thereunder whereby a person can (a) be informed if he is the subject of information in the system, (b) gain access to the information, and (c) contest its accuracy, completeness, pertinence, and the necessity for retaining it; and

(4) an analysis of the administrative and cost considerations for providing continuing and regular inspection of all information systems which are or could reasonably come under the jurisdiction of this Act [§§ 16-801 — '6-810] to assure that information practices are in compliance with this Act and regulations adopted thereunder.

(5) any recommendations concerning appropriate legislation. [Acts 1977, No. 236, § 4, p. 337.]

Compiler's Notes. The words enclosed in parentheses in subsection (a) so appeared in the law as enacted.

The bracketed word "regulations" in subsection (k) (3) (vii) was inserted by the compiler.

Acts 1977, No. 100 compiled as §§ 5-1201 — 5-1212 provides for a system for the termination, study, review, continuation or reestablishment of all state agencies, departments, boards, commissions, institutions and programs of the State of Arkansas. Under such act all such agencies, departments, boards, commissions, institutions and programs are to be terminated on a date provided in the act and may be continued or reestablished by the General Assembly by the adoption of a law providing for reestablishment thereof. See §§ 5-1201 — 5-1212.

The date established by such act for the termination of the Information Practices Board is June 30, 1981. See § 5-1204.

Cross-References. Consultant, contract with, reports to division of revenue, department of finance and administration, §§ 6-620 — 6-622.

Damages adjudged against state officers and employees, payment by state, §§ 12-3401 — 12-3406.

Section to Section References. This section is referred to in § 16-806.

Legal Periodicals. Survey of Arkansas Law, Public Law, 1 UALR L. J. 230 (1978).

16-805. Local government. — (a) The Board shall exercise all powers and perform all duties as provided for in the Act [§§ 16-801 — 16-810] with regard to any personal information system operated, conducted or maintained by such local government, other political subdivision or combination thereof.

(b) At the request of any local government, other political subdivision or combination thereof in this State, the Board may adopt regulations to: permit the establishment of a local information practices board; govern the operation of such local information practices board; and define the rule-making and review authority of such local information practices board. Such local information practices board shall be operated by and at the expenses of such local government, other political subdivision or combination thereof.

(c) Such local government, other political subdivision or combination thereof may request that the Board dissolve a local information practices board. [Acts 1977, No. 236, § 5, p. 337.]

Compiler's Notes. Section 13 of Acts 1977, No. 236 provided that this section should become effective April 1, 1977.

16-806. Rights of subjects of information. — The rights of persons on whom the information is stored or to be stored and the responsibilities of the responsible authority shall be as follows:

(a) The purpose for which personal information is collected and used or to be collected and used shall be filed in writing by the responsible authority with the Board and shall be a matter of public record pursuant to Section 4 [§ 16-804].

(b) A person asked to supply personal information shall be informed of all intended uses and of the purpose of all intended uses of the requested information.

(c) A person asked to supply personal information shall be informed whether he may refuse or is legally required to supply the requested information. He shall be informed of any known consequence arising from his supplying or refusing to supply the personal information.

(d) Information shall not be used for any purpose other than as stated in clause (a) of this section unless (1) the responsible authority first makes an additional filing in accordance with clause (a); (2) the Legislature gives its approval by law; or (3) the persons to whom the information pertains give their informed consent.

(e) Upon request to a responsible authority, a person shall be informed whether he is the subject of stored information and if so, and upon his additional request, shall be informed of the content and meaning of the data recorded about him and shown the information without any charge to him. For a six [6] month period after such disclosure, the responsible authority may charge a fee equal to their actual cost of making the disclosure for additional disclosures. This clause does not apply to information about persons which is defined by statute as confidential or to records relating to the medical or psychiatric treatment of an individual and nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(f) A person shall have the right to contest the accuracy or completeness of information about him. To institute a contest, the person shall notify in writing the responsible authority describing the nature of the disagreement. The responsible authority shall within thirty (30) days excluding Saturdays, Sundays, and holidays correct the information if the data is found to be inaccurate or incomplete and attempt to notify past recipients who have received the inaccurate or incomplete data within the preceding two [2] years of the inaccurate or incomplete information, or notify the person of disagreement. The determination of the responsible authority is appealable in accordance with the Administrative Procedures Act [§§ 5-701 — 5-715]. Information in dispute shall not be disclosed except under conditions of demonstrated need and then only if the person's statement of disagreement is included with the disclosed information.

(g) A person has the right to be free from the storage and continued collection of personal information no longer utilized for any valid purpose.

(h) A person has the right to be free from the collection, storage or dissemination of any personal information collected from anonymous sources except as exempted by the Board or statutes. [Acts 1977, No. 236, § 6, p. 337.]

Compiler's Notes. Section 13 of Acts 1977, No. 236 provided that this section should become effective April 1, 1976.

16-807. Use of social security number. — (a) No agency of the government of this State or of any local government or political subdivision of this State shall deny to any individual any right, benefit or privilege

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provided by law because of such individual's refusal to disclose his social security number.

(b) Subsection (a) shall not apply with respect to any disclosure required by Federal statute or to the disclosure of a social security number to any State agency, local government or political subdivision maintaining a personal information system before the effective date [February 23, 1977] of this Act, if such disclosure was required under statute or ordinance adopted prior to such date to verify the identity of an individual.

(c) Any individual requested to reveal his or her social security number must be informed whether the disclosure is mandatory or voluntary, by what statutory or other authority the number is solicited, and what uses will be made of it. [Acts 1977, No. 236, § 7, p. 337.]

16-808. Penalties. — Any person who willfully violates the provisions of this Act [§§ 16-801 — 16-810] or any rules and regulations promulgated thereunder is guilty of a misdemeanor and additionally shall be liable for a mandatory civil penalty of at least Five Hundred Dollars ($500.00) to be recovered by the State or political subdivision by whom the individual is employed. Any person damaged in his person or property by reason of an individual's willful violation of any of the provisions of this Act may recover actual and punitive damages from such individual together with a reasonable attorney's fee. [Acts 1977, No. 236, § 8, p. 337.]

16-809. Common law. — No existing statute or common law shall be limited or reduced by this Act [§§ 16-801 — 16-810]. [Acts 1977, No. 236, § 9, p. 337.]

16-810. Relation to other acts. — Nothing in this Act [§§ 16-801 — 16-810] shall be construed to restrict or modify that right of access to public records as p. ided by Section 24 of Act 142 of 1949 (Ark. Stats. 75-124) and Act 78 of 19 (Ark. Stats. 16-601). [Acts 1977, No. 236, § 10, p. 337.]

Liberal Construction. Section 12 of Acts 1977, No. 236 read: "The provisions of this Act and the regulations promulgated thereunder shall be liberally construed to protect the person's right to privacy and confidentiality."

Separability. Section 11 of Acts 1977, No. 236 read: "If any section, subsection, sentence or clause of this Act shall be adjudged unconstitutional, such adjudication shall not affect the validity of the Act as a whole or of any section, subsection, sentence or clause thereof not adjudged unconstitutional."

Effective Dates. Section 13 of Acts 1977, No. 236 read: "Section 6 of this Act shall become effective on April 1, 1976; and Section 5 on April 1, 1977."

Emergency. Section 14 of Acts 1977, No. 236 read: "It is found and determined by the Seventy-First General Assembly that the area of information privacy is a very broad and complex one, that the rights of Arkansas citizens are deserving of immediate protection, and that in order for the Information Practices Board established by this Act to meet the reporting deadlines set out herein, the Board must begin work immediately. Therefore, an emergency is hereby declared to exist, and this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall take effect and be in force from the date of its passage and approval." Approved February 23, 1977.

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district office. The amount of straight life annuity to be received shall be (except as provided in Section 5, [§ 12-2705], Subsections 5 and 7 herein) one-half [½] the salary as of July 1, 1965, established for the position in which such person shall have served. [Acts 1965, No. 148, § 9, p. 442.]

Compiler's Notes. The bracketed words "Director of Finance and Administration" in the first sentence were inserted by the compiler as the office of state comptroller was abolished by Acts 1967, No. 468, § 2 and replaced by the State Administration Department which was, in turn, replaced by the Department of Finance and Administration pursuant to Acts 1971, No. 38, § 5. See §§ 5-801, 5-802 and notes thereto.

The words in parentheses so appeared in the law as enacted.

Separability. Section 10 of Acts 1965, No. 148, read: "If any section, subsection, or part thereof, of this Act shall be declared unconstitutional, such adjudication shall not affect other provisions hereof."

12-2710. Widows of members — Benefits — Qualifications. — The widow of any person who is now or who was a member of the Quasi-Judicial Retirement System and who died, or dies, before retirement without receiving any benefits under the Quasi-Judicial Retirement System and who served, before his death, for a period of not less than twenty [20] years on either (or a combination of) the Arkansas Workmen's Compensation Commission, the Arkansas Public Service Commission, or the Arkansas Commerce Commission (or successors to such tribunals) shall be entitled to a benefit for life or until her remarriage, payable from the Quasi-Judicial Division of the Judicial Retirement System Fund, in an amount equal to one-half [½] of the retirement benefits which the deceased member would have received, had he lived until retirement. [Acts 1971, No. 151, § 1, p. 388.]

12-2711. "Widow" defined. — For purposes of this Act [§§ 12-2510, 12-2511], the term "widow" is defined as the surviving wife who has attained the age of sixty (60) years, and one to whom a member had been married not less than five [5] years, and with whom said member was living at the time of his death. [Acts 1971, No. 151, § 2, p. 388.]

Repealing Clause. Section 3 of Acts 1971, No. 151, repealed all laws and parts of laws in conflict therewith.

Separability. Section 4 of Acts 1971, No. 151, read: "If any provision of this Act is held invalid such invalidity shall not affect other provisions of this Act which can be given effect without the invalid provision, and to this end the provisions of this Act are declared to be severable."

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	P.C. 11077			X
2. Privacy and Security Council				
3. Dissemination Regulations	Dept. of Justice Reg. Ch. 1, Title II, Cal. Adm. Code	X		
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	P.C. 11105, 13300			X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	P.C. 11105, 13300			X
3.12 Authorizes to Private Sector	P.C. 11105, 13300			X
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	P.C. 11105, 13300			X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	P.C. 11105, 13300			X
3.22 Authorizes to Private Sector	P.C. 11105, 13300			X
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	P.C. 11105, 13300			X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	P.C. 11105, 13300			X
3.32 Authorizes to Private Sector	P.C. 11105, 13300			X
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	P.C. 11121			X
5. Right to Challenge	P.C. 11126	X		
6. Judicial Review of Challenged Information	P.C. 11126			X
7. Purging Non-Conviction Information	P.C. 851.8 Dept. of Justice Reg.	X		X
8. Purging Conviction Information	Dept. of Justice Reg.	X		

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information	P.C. 851.8 P.C. Sect. 1203.45			X X
10. Sealing Conviction Information	P.C. Sect. 1203.45			X
11. Removal of Disqualifications	P.C. Sect. 1203.45			X
12. Right to State Non-Existence of Record	Labor Code Sect. 432.7		X	
13. Research Access	P.C. 11105, 13300, 13305, 13202 P.C. 11144	X		X
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	P.C. 11115, 11116 P.C. 13150, 13151, 13152	X X		
14.2 Auditing Requirements	P.C. 11079			X
14.3 Other Accuracy/Completeness Requirements	P.C. 11126			X
15. Dedication				
16. Civil Remedies				
17. Criminal Penalties	P.C. 11141, 11142, 11143 P.C. 11302, 11303, 11304	X X		
18. Public Records	G.C. 6251	X		
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security	P.C. 11077 Reg. Sect. 706, 707	X		X
22.1 Physical (Building) Security				
22.2 Administrative Security				
22.3 Computer Security				
23. Transaction Logs	P.C. 11078 Reg. Sect. 703(c)	X		X
24. Training Employees	P.C. 11077 Reg. Sect. 710	X		X
25. Listing of Information Systems				
26. FOIA (Including CJI)				
27. FOIA (Excluding CJI)	G.C. 6254	X		
28. Central State Repository	P.C. 11105			X

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California Penal Code

§ 851.8 Sealing and destruction of arrest records; determination of factual innocence; contingent repeal

(a) In any case where a person has been arrested and no accusatory pleading has been filed, the person arrested may petition the law enforcement agency having jurisdiction over the offense to destroy its records of the arrest. A copy of such petition shall be served upon the district attorney of the county having jurisdiction over the offense. The law enforcement agency having jurisdiction over the offense, upon a determination that the person arrested is factually innocent, shall, with the concurrence of the district attorney, seal its arrest records, and the petition for relief under this section for three years from the date of the arrest and thereafter destroy its arrest records and the petition. The law enforcement agency having jurisdiction over the offense shall notify the Department of Justice, and any law enforcement agency which arrested the petitioner or participated in the arrest of the petitioner for an offense for which the petitioner has been found factually innocent under this subdivision, of the sealing of the arrest records and the reason therefor. The Department of Justice and any law enforcement agency so notified shall forthwith seal their records of the arrest and the notice of sealing for three years from the date of the arrest, and thereafter destroy their records of the arrest and the notice of sealing. The law enforcement agency having jurisdiction over the offense and the Department of Justice shall request the destruction of any records of the arrest which they have given to any local, state, or federal agency or to any other person or entity. Each such agency, person, or entity within the State of California receiving such a request shall destroy its records of the arrest and such request, unless otherwise provided in this section.

(b) If, after receipt by both the law enforcement agency and the district attorney of a petition for relief under subdivision (a), the law enforcement agency and district attorney do not respond to the petition by accepting or denying such petition within 60 days after the running of the relevant statute of limitations or within 60 days after receipt of the petition in cases where the statute of limitations has previously lapsed, then the petition shall be deemed to be denied. In any case where the petition of an arrestee to the law enforcement agency to have an arrest record destroyed is denied, petition may be made to the municipal or justice court which would have had territorial jurisdiction over the matter. A copy of such petition shall be served on the district attorney of the county having jurisdiction over the offense at least 10 days prior to the hearing thereon. The district attorney may present evidence to the court at such hearing. Notwithstanding Section 1538.5 or 1539, any judicial determination of factual innocence made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or any other evidence submitted by the parties which is material, relevant and reliable. A finding of factual innocence and an order for the sealing and destruction of records pursuant to this section shall not be made unless the court finds that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. In any court hearing to determine the factual innocence of a party, the initial burden of proof shall rest with the petitioner to show that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. If the court finds that this showing of no reasonable cause has been made by the petitioner, then the burden of proof shall shift to the respondent to show that a reasonable cause exists to believe that the petitioner committed the offense for which the arrest was made. If the court finds the arrestee to be factually innocent of the charges for which the arrest was made, then the court shall order the law enforcement agency having jurisdiction over the offense, the Department of Justice, and any law enforcement agency which arrested the petitioner or participated in the arrest of the petitioner for an offense for which the petitioner has been found factually innocent under this section to seal their records of the arrest and the court order to seal and destroy such records, for three years from the date of the arrest and thereafter to destroy their records of the arrest and the court order to seal and destroy such records. The court shall also order the law enforcement agency having jurisdiction over the offense and the Department of Justice to request the destruction of any records of the arrest which they have

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given to any local, state, or federal agency, person or entity. Each state or local agency, person or entity within the State of California receiving such a request shall destroy its records of the arrest and the request to destroy such records, unless otherwise provided in this section. The court shall give to the petitioner a copy of any court order concerning the destruction of the arrest records.

(c) In any case where a person has been arrested, and an accusatory pleading has been filed, but where no conviction has occurred, the defendant may, at any time after dismissal of the action, petition the court which dismissed the action for a finding that the defendant is factually innocent of the charges for which the arrest was made. A copy of such petition shall be served on the district attorney of the county in which the accusatory pleading was filed at least 10 days prior to the hearing on the petitioner's factual innocence. The district attorney may present evidence to the court at such hearing. Such hearing shall be conducted as provided in subdivision (b). If the court finds the petitioner to be factually innocent of the charges for which the arrest was made, then the court shall grant the relief as provided in subdivision (b).

(d) In any case where a person has been arrested and an accusatory pleading has been filed, but where no conviction has occurred, the court may, with the concurrence of the district attorney, grant the relief provided in subdivision (b) at the time of the dismissal of the accusatory pleading.

(e) Whenever any person is acquitted of a charge and it appears to the judge presiding at the trial wherein such acquittal occurred that the defendant was factually innocent of such charge, the judge may grant the relief provided in subdivision (b).

(f) In any case where a person who has been arrested is granted relief pursuant to subdivision (a) or (b), the law enforcement agency having jurisdiction over the offense or court shall issue a written declaration to the arrestee stating that it is the determination of the law enforcement agency having jurisdiction over the offense or court that the arrestee is factually innocent of the charges for which he was arrested and that the arrestee is thereby exonerated. Thereafter, the arrest shall be deemed not to have occurred and the person may answer accordingly any question relating to its occurrence.

(g) The Department of Justice shall furnish forms to be utilized by persons applying for the destruction of their arrest records and for the written declaration that one person was found factually innocent under subdivisions (a) and (b).

(h) Documentation of arrest records destroyed pursuant to subdivision (a), (b), (c), (d), or (e) which are contained in investigative police reports shall bear the notation "Exonerated" whenever reference is made to the arrestee. The arrestee shall be notified in writing by the law enforcement agency having jurisdiction over the offense of the sealing and destruction of the arrest records pursuant to this section.

(i) Any finding that an arrestee is factually innocent pursuant to subdivision (a), (b), (c), (d), or (e) shall not be admissible as evidence in any action.

(j) Destruction of records of arrest pursuant to subdivision (a), (b), (c), (d), or (e) shall be accomplished by permanent obliteration of all entries or notations upon such records pertaining to the arrest, and the record shall be prepared again so that it appears that the arrest never occurred. However, where (1) the only entries on the record pertain to the arrest and (2) the record can be destroyed without necessarily effecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(k) No records shall be destroyed pursuant to subdivision (a), (b), (c), (d), or (e) if the arrestee or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of such records has received a certified copy of the complaint in such civil action, until the civil action has been resolved. Any records sealed pursuant to this section by the court in the civil actions, upon a showing of good cause, may be opened and submitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties and any other person authorized by the court. Immediately following the final resolution of the civil action, records subject to subdivision (a), (b), (c), (d), or (e) shall be sealed and destroyed pursuant to subdivision (a), (b), (c), (d), or (e).

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(l) For arrests occurring on or after January 1, 1981, and for accusatory pleadings filed on or after January 1, 1981, petitions for relief under this section may be filed up to two years from the date of the arrest or filing of the accusatory pleading, whichever is later. Until January 1, 1983, petitioners can file for relief under this section for arrests which occurred or accusatory pleadings which were filed up to five years prior to the effective date of the statute. Any time restrictions on filing for relief under this section may be waived upon a showing of good cause by the petitioner and in the absence of prejudice.

(m) Any relief which is available to a petitioner under this section for an arrest shall also be available for an arrest which has been deemed to be or described as a detention under Section 849.5 or 851.6.

(n) The provisions of this section shall not apply to any offense which is classified as an infraction.

(o)(1) The provisions of this section shall be repealed on the effective date of a final judgment based on a claim under the California or United States Constitution holding that evidence which is relevant, reliable, and material may not be considered for purposes of a judicial determination of factual innocence under this section. For purposes of this subdivision, a judgment by the appellate department of a superior court is a final judgment if it is published and if it is not reviewed on appeal by a district court of appeal. A judgment of a district court of appeal is a final judgment if it is published and if it is not reviewed by the California Supreme Court.

(2) Any such decision referred to in this subdivision shall be stayed pending appeal.

(3) If not otherwise appealed by a party to the action, any such decision referred to in this subdivision which is a judgment by the appellate department of the superior court, shall be appealed by the Attorney General.

(Added by Stats.1980, c. 1172, p. —, § 2, urgency, eff. Sept. 29, 1980.)

Effective contingent repeal of this section, see note under § 851.85.

1980 Legislation.

Former § 851.8, added by Stats.1975, c. 904, p. 2002, § 1, relating to motion to seal records on acquittal if the person appears to the judge to be factually innocent, was repealed by Stats.1980, c. 1172, p. —, § 1. See, now, § 851.85.

Law Review Commentaries

Decriminalization of convicted: Plea for representation. Rodney R. Jones, (1976) 13 San Diego L.Rev. 804.

Mitigating client's criminal record. Rodney R. Jones (1977) 52 S.Bar J. 113.

Rights of innocent arrestee: Sealing of records. (1977) 28 Hast.L.J. 1563.

Library References

Criminal Law ⇐1222.

C.J.S. Criminal Law § 2008 et seq.

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Validity of prior law

1. Validity of prior law

Fact that provision of § 851.8 (repealed; see, now, this section) relating to sealing of records in criminal cases permitted sealing such records when an accused was acquitted and it appeared to the judge who presided at trial that the accused was factually innocent of the charge but did not permit sealing such records in situations wherein the charge was dismissed "in furtherance of justice" did not violate equal protection requirements; it was difficult to conceive of a class of defendants who more logically deserved the benefits of the provision than those defendants who were not only acquitted on a criminal charge but also appeared to the judge who presided to be "factually innocent" and, therefore, the statutory distinction had a rational basis. People v. Glimps (1979) 155 Cal.Rptr. 230, 92 C.A.3d 315.

2. In general

Though acquittal is one precondition that must be satisfied before a court has authority to seal records in a criminal case, not all acquittals justify sealing; thus, acquittals for technical reasons usually will not justify sealing and even an acquittal on the merits which is merely an adjudication that proof at the prior proceeding was not sufficient to overcome all reasonable doubt as to guilt does not suffice. People v. Glimps (1979) 155 Cal.Rptr. 230, 92 C.A.3d 315.

Underline indicates changes or additions by amendment

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Section 851.8 (repealed; see, now, this section) allowing an adult to apply for sealing of records upon showing that he was acquitted and was factually innocent was remedial statute which should have been liberally construed to promote underlying public policy and if the meaning was doubtful, the statute should have been construed as to extend the remedy. People v. White (1978) 144 Cal.Rptr. 128, 77 C.A.3d Supp. 17.

Section 851.8 (repealed; see, now, this section) providing relief for innocent arrestees was applicable to anyone who had been acquitted and not merely to those who were acquitted after January 1, 1976. Id.

Arrest records and all other documents in the case may be sealed upon request whenever a person charged with any offense has been acquitted and it appears to the judge that he was "factually innocent"; and in that event, the court must inform the defendant that he may thereafter state that he was not arrested for such charge and that he was found innocent of such charge by the court. Loder v. Municipal Court for San Diego Judicial Dist. of San Diego County (1976) 132 Cal.Rptr. 464, 553 P.2d 624, 17 C.3d 859.

3. Findings

Where accused was not acquitted and there was no trial at which evidence establishing factual innocence could have been presented and where dismissal of case at request of prosecutor was made on conditions negating any assumption of innocence and judge who made purported finding that defendant was adjudged factually innocent was not the judge who had entered the dismissal and had no competent evidence before him upon which to make any such finding, purported finding, made in connection with sealing record, did not satisfy requirements of § 851.8 (repealed; see, now, this section) and, therefore, order sealing record was in excess of jurisdiction and was void. People v. Glimps (1979) 155 Cal. Rptr. 230, 92 C.A.3d 315.

4. Review

An order sealing record that is made without legislative authority is in excess of the court's jurisdiction and, when it appears from the record that the order was made without authority, the order is void and must be set aside on motion at any time after its entry by the court which made the order. People v. Glimps (1979) 155 Cal.Rptr. 230, 92 C.A.3d 315.

An order denying a petition to seal arrest records is appealable as it is an order made after judgment affecting the substantial rights of the people. People v. White (1978) 144 Cal.Rptr. 128, 77 C.A.3d Supp. 17.

§ 851.85 Motion to seal records on acquittal if person appears to judge to be factually innocent; rights of defendant under order

Whenever a person is acquitted of a charge and it appears to the judge presiding at the trial wherein such acquittal occurred that the defendant was factually innocent of the charge, the judge may order that the records in the case be sealed, including any record of arrest or detention, upon the written or oral motion of any party in the case or the court, and with notice to all parties to the case. If such an order is made, the court shall give to the defendant a copy of such order and inform the defendant that he may thereafter state that he was not arrested for such charge and that he was found innocent of such charge by the court.
(Added by Stats.1980, c. 1172, p. —, § 3, urgency, eff. Sept. 29, 1980.)

Operative effect, see note under this section.

1980 Legislation.

Section 4 of Stats.1980, c. 1172, p. —, provided:

"If the provisions of Section 851.8 of the Penal Code as added by Section 2 of this act are repealed pursuant to subdivision (c) of Section 851.8, then Section 3 of this act shall be operative on the operative date of the repeal of Section 851.8."

Derivation: Former § 851.8, added by Stats.1975, c. 904, p. 2002, § 1.

* * *

11075.

(a) As used in this article, "criminal offender record information" means records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release.

(b) Such information shall be restricted to that which is recorded as the result of an arrest, detention, or other initiation of criminal proceedings or of any consequent proceedings related thereto.

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11076.

Criminal offender record information shall be disseminated, whether directly or through any intermediary, only to such agencies as are, or may subsequently be authorized access to such records by statute.

11077.

The Attorney General is responsible for the security of criminal offender record information. To this end, he shall:

(a) Establish regulations to assure the security of criminal offender record information from unauthorized disclosures at all levels of operation in this state.

(b) Establish regulations to assure that such information shall be disseminated only in situations in which it is demonstrably required for the performance of an agency's or official's functions.

(c) Coordinate such activities with those of any interstate systems for the exchange of criminal offender record information.

(d) Cause to be initiated for employees of all agencies that maintain, receive, or are eligible to maintain or receive, criminal offender record information a continuing educational program in the proper use and control of criminal offender record information.

(e) Establish such regulations as he finds appropriate to carry out his functions under this article.

11078.

Each agency holding or receiving criminal offender record information in a computerized system shall maintain, for such period as is found by the Attorney General to be appropriate, a listing of the agencies to which it has released or communicated such information.

11079.

The Attorney General may conduct such inquires and investigations as he finds appropriate to carry out functions under this article. He may for this purpose direct any agency that maintains, or has received, or that is eligible to maintain or receive criminal offender records to produce for inspection statistical data, reports, and other information concerning the storage and dissemination of criminal offender record information. Each such agency is authorized and directed to provide such data, reports, and other information.

11105. State summary criminal history information; maintenance, furnishing to authorized persons; fingerprints on file without criminal history; fees

(a)(1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(i) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, date of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about such person.

(ii) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to any of the following, when needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, the provisions of Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state as defined in Section 830.1, subdivisions (a) and (b) of Section 830.2, subdivisions (a), (b), and (j) of Section 830.3, subdivisions (a), (b), and (c), of Section 830.5, and Section 830.5a.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) Probation officers of the state.

(6) Parole officers of the state.

(7) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08 of the Penal Code.

(8) A public defender or attorney of record when representing a person in a criminal case and when authorized access by statutory or decisional law.

(9) Any agency, officer, or official of the state when such criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(10) Any city or county, or city and county, or district, or any officer, or official thereof when access is needed in order to assist such agency, officer, or official in fulfilling employment, certification, or licensing duties, and when such access is specifically authorized by the city council, board of supervisors or governing board of the city, county, or district when such criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(11) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120), Chapter 1, Title 1 of Part 4 of the Penal Code.

(12) Any person or entity when access is expressly authorized by statute when such criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(13) Health officers of a city, county, or city and county, or district, when in the performance of their official duties enforcing Section 3110 of the Health and Safety Code.

(14) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(c) The Attorney General may furnish state summary criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, the provisions of Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) Any public utility as defined in Section 216 of the Public Utilities Code which operates a nuclear energy facility when access is needed in order to assist in employing persons to work at such facility, provided that, if the Attorney General supplies such data, he shall furnish a copy of such data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To a peace officer of another country.

(4) To public officers (other than peace officers) of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States when such information is needed for the performance of their official duties.

(5) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(6) The courts of the United States, other states or territories or possessions of the United States.

(7) Peace officers of the United States, other states, or territories or possessions of the United States.

(8) To any individual who is the subject of the record requested when needed in conjunction with an application to enter the United States or any foreign nation.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying such request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished pursuant to this section, the Department of Justice may charge the person or entity making the request a fee which it determines to be sufficient to reimburse the department for the cost of furnishing such information. Any state agency required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the agency for such expense. All moneys received by the department pursuant to this section, Section 12054 of the Penal Code, and Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to such sections when appropriated by the Legislature therefor.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7514 of the Business and Professions Code shall take priority over the processing of applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

Added by Stats. 1975, c. 1222, Section 2. Amended by Stats. 1976, c 683, Section 1; Stats. 1978, c. 475, Section 1; Stats. 1979, c 982, Section 8.

13202.

Every public agency or bona fide research body immediately concerned with the prevention or control of crime, the quality of criminal justice, or the custody or correction of offenders may be provided with such criminal offender record information as is required for the performance of its duties, provided that any material identifying individuals is not transferred, revealed, or used for other than research or statistical activities and reports or publications derived therefrom do not identify specific individuals, and provided that such agency or body pays the cost of the processing of such data as determined by the Attorney General.

* * *

ARTICLE 5. EXAMINATION OF RECORDS [NEW]

Sec.

11120. Record defined.
11121. Purpose.
11122. Application; contents; fee.
11123. Submission of application; fee.
11124. Determination of existence of record; copy of record or notice of no record; delivery.
11125. Unauthorized requirement of obtaining record or notice of record; offense [New].
11126. Correction of record; written request for clarification; notice of correction of record; administrative adjudication; judicial review.
11127. Regulations.

Article 5 was added by Stats.1971, c. 1439, p. 2843, § 1.

Review of criminal offender record information, see 11 Cal.Adm.Code 705.

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§ 11120. Record defined

As used in this article, "record" with respect to any person means the state summary criminal history information as defined in subdivision (a) of Section 11105, maintained under such person's name by the Department of Justice.

(Added by Stats.1971, c. 1439, p. 2844, § 1. Amended by Stats.1972, c. 1377, p. 2841, § 86.1; Stats.1975, c. 1222, p. 3087, § 3.)

Library references
Words and Phrases (Perm. Ed.)

1. In general
Section 11120 to 11127 dealing with access of private individuals to their state arrest records constituted special legislation and took precedence over any general legislation such as Public Records Act. Younger v. Berkeley City Council (1975) 119 Cal.Rptr. 830, 45 C.A.3d 825.

Even as to documents in the file of an inmate which are privileged by statute or public policy, there is no absolute privilege against inspection; rather the privilege may be exercised only insofar as it does not deny due process to the inmate. In re Olson (1974) 112 Cal.Rptr. 579, 37 C.A.3d 783.

§ 11121. Purpose

It is the function and intent of this article to afford persons concerning whom a record is maintained in the files of the bureau * * * an opportunity to * * * obtain a copy of the record compiled from such files, and to refute any erroneous or inaccurate information contained therein * * *

(Added by Stats.1971, c. 1439, p. 2844, § 1. Amended by Stats.1980, c. 939, p. —, § 1.)

1980 Amendment. Substituted "an opportunity to obtain a copy of the record" for "such reasonable opportunity to examine the record"; and deleted "as is consistent with the requirements and functions of the bureau" from the end of the section.

§ 11122. Application; contents; fee

Any person desiring * * * a copy of the record relating to himself shall obtain * * * an application form furnished by the department which shall require his fingerprints in addition to such other information as the department shall specify. Applications may be obtained from police departments, sheriff departments, or the Department of Justice. The * * * fingerprinting agency may fix a reasonable fee for affixing the applicant's fingerprints to the form, and shall retain such fee * * *.

(Added by Stats.1971, c. 1439, p. 2844, § 1. Amended by Stats.1972, c. 1377, p. 2842, § 86.2; Stats.1980, c. 939, p. —, § 2.)

1972 Amendment. Substituted department for bureau.

1980 Amendment. Substituted "a copy of the record" for "to examine a record"; deleted "from the chief of police of the city of his residence, or, if not a resident of a city, from the sheriff of his county of residence, or from the office of the department" following "obtain" in the first sentence; and substituted "The fingerprinting agency" for "The city or county, as applicable," at the beginning of the third sentence; and added the second sentence.

§ 11123. Submission of application; fee

The applicant shall submit the completed application directly to the department. The application shall be accompanied by a fee * * * not to exceed * * * twenty-five dollars ($25) that the department determines equals the costs of processing the application and * * * providing a copy of the record to the applicant. All fees received by the department under this section are hereby appropriated without regard to fiscal years for the support of the Department of Justice in addition to such other funds as may be appropriated therefor by the Legislature. Any request for waiver of fee shall accompany the original request for the record and shall include a claim and proof of indigency.

(Added by Stats.1971, c. 1439, p. 2844, § 1. Amended by Stats.1972, c. 1377, p. 2842, § 86.3; Stats.1980, c. 939, p. —, § 3.)

1972 Amendment. Substituted department for bureau.

1980 Amendment. Substituted "not to exceed twenty-five dollars ($25)" for "of five dollars ($5) or such higher amount, not to exceed ten dollars ($10) and "providing a copy of the record to the applicant" for "making a record available for examination" in the first sentence; and added the third sentence.

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§ 11124. Determination of existence of record; copy of record or notice of no record; delivery

When an application is received by the department, the department shall determine whether a record pertaining to the applicant is maintained. If such record is maintained, the department shall * * * furnish a copy of the record to the applicant or to an individual designated by the applicant. If no such record is maintained, the department shall so notify the applicant or an individual designated by the applicant. Delivery of the copy of the record, or notice of no record, may be by mail * * * or other appropriate means agreed to by the applicant and the department.

(Added by Stats.1971, c. 1439, p. 2844, § 1. Amended by Stats.1972, c. 1377, p. 2842, § 86.4; Stats.1975, c. 667, p. 1457, § 1; Stats.1980, c. 939, p. —, § 4.)

1972 Amendment. Substituted department for bureau.

1975 Amendment. Provided alternatively that if unable to review record at department facility, an applicant may review same at police department or sheriff's office.

1980 Amendment. Rewrote the section which previously read: "When an application is received by the department, the department shall determine whether a record pertaining to the applicant is maintained. If such record is maintained, the department shall inform the applicant by mail of the existence of the record and shall either specify a time when the record may be examined at a suitable facility of the department or, if the applicant is unable to review the record at the time and place set by the department, authorize the applicant to review the record at any police department or sheriff's office which agrees to make the record available to the applicant. Upon verification of his identity, the applicant shall be allowed to examine the record pertaining to him, or a true copy thereof, for a period not to exceed one hour. The applicant may not retain or reproduce the record, but may make a written summary or notes in his own handwriting".

§ 11125. Unauthorized requirement of obtaining record or notice of no record; offense

No person or agency shall require another person to obtain a copy of a record or notification that a record exists or does not exist, as provided in Section 11124, unless specifically authorized by law. A violation of this section is a misdemeanor. (Added by Stats.1980, c. 939, p. —, § 6.)

1980 Legislation.

Former § 11125, added by Stats.1971, c. 1439, p. 2844, § 1, amended by Stats.1972, c. 1377, p. 2842, § 86.5, relating to the applications of prisoners to examine records, was repealed by Stats.1980, c. 939, p. —, § 5.

§ 11126. Correction of record; written request for clarification; notice of correction of record; administrative adjudication; judicial review

(a) If the applicant desires to question the accuracy or completeness of any material matter contained in the record, he may submit a written request to the department in a form established by it. The request shall include a statement of the alleged inaccuracy or incompleteness in the record, and its materiality, and shall specify any proof or corroboration available. Upon receipt of such request, the department shall forward it to the person or agency which furnished the questioned information. Such person or agency shall, within 30 days of receipt of such written request for clarification, review its information and forward to the department the results of such review.

(b) If such agency concurs in the allegations of inaccuracy or incompleteness in the record, and finds that the error is material, it shall correct its record and shall so inform the department, which shall correct the record accordingly. The department shall inform the applicant of its correction of the record under this subdivision within 30 days. The department and the agency shall notify all persons and agencies to which they have disseminated the incorrect record in the past 90 days of the correction of the record, and the applicant shall be informed that such notification has been given. The department and the agency shall also notify those persons or agencies to which the incorrect record has been disseminated which have been specifically requested by the applicant to receive notification of

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the correction of the record, and the applicant shall be informed that such notification has been given.

(c) If such agency denies the allegations of inaccurateness or incompleteness in the record, the matter shall be referred for administrative adjudication in accordance with Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2 of the Government Code for a determination of whether inaccuracy or incompleteness exists in the record. The agency from which the questioned information originated shall be the respondent in the hearing. If * * * a material inaccuracy or incompleteness is found in any record, the agency in charge of that record shall be directed to correct it accordingly, and to inform the department, which shall correct its record accordingly. The department and the agency shall notify all persons and agencies to which they have disseminated the incorrect record in the past 90 days of the correction of the record, and the applicant shall be informed that such notification has been given. The department and the agency shall also notify those persons or agencies to which the incorrect record has been disseminated which have been specifically requested by the applicant to receive notification of the correction of the record, and the applicant shall be informed that such notification has been given. Judicial review of the decision shall be governed by Section 11523 of the Government Code. The applicant shall be informed of the decision within 30 days of its issuance in accordance with Section 11518 of the Government Code.

(Added by Stats.1971, c. 1439, p. 2845, § 1. Amended by Stats.1972, c. 1377, p. 2842, § 86.6; Stats.1980, c. 939, p. —, § 7.)

1972 Amendment. Substituted department for bureau.

1980 Amendment. Added requirement that the inaccuracy or incompleteness be material; and added the second and third sentences of subd. (b) and the fourth and fifth sentences of subd. (c).

§ 11127. Regulations

The * * * department shall adopt all regulations necessary to carry out the provisions of this article.

(Added by Stats.1971, c. 1439, p. 2845, § 1. Amended by Stats.1972, c. 1377, p. 2842, § 86.7.)

1972 Amendment. Substituted department for bureau.

ARTICLE 6. UNLAWFUL FURNISHING OF * * * STATE SUMMARY CRIMINAL HISTORY INFORMATION [NEW]

Sec.

11140. Definitions.
11141. Employee of justice department furnishing record or information to unauthorized person; misdemeanor.
11142. Authorized person furnishing record or information to unauthorized person; misdemeanor.
11143. Unauthorized person receiving record or information; misdemeanor.
11144. Dissemination of statistical or research information from a record.

Article 6 was added by Stats.1974, c. 963, p. 2008, § 1.

The heading of Article 6, Unlawful Furnishing of Master Record Sheet, was amended by Stats.1975, c. 1222, p. 3087, § 4, to read as it now appears.

§ 11140. Definitions

As used in this article:

(a) "Record" means the * * * state summary criminal history information as defined in subdivision (a) of Section 11105, or a copy thereof, maintained under a person's name by the Department of Justice. * * *

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(b) "A person authorized by law to receive a record" means any person or public agency authorized by a court, statute, or decisional law to receive a record.
(Added by Stats.1974, c. 963, p. 2008, § 1. Amended by Stats.1975, c. 1222, p. 3087, § 5.)

1975 Amendment. Substituted "state summary criminal history information as defined in subdivision (a) of Section 11105," for "master record sheet" in subd. (a).

§ 11141. Employee of justice department furnishing record or information to unauthorized person; misdemeanor

Any employee of the Department of Justice who knowingly furnishes a record or information obtained from a record to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor.
(Added by Stats.1974, c. 963, p. 2008, § 1.)

Library References
Records ⇐14.
C.J.S. Records § 35 et seq.

§ 11142. Authorized person furnishing record or information to unauthorized person; misdemeanor

Any person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor.
(Added by Stats.1974, c. 963, p. 2008, § 1.)

Library References
Records ⇐14.
C.J.S. Records § 35 et seq.

§ 11143. Unauthorized person receiving record or information; misdemeanor

Any person, except those specifically referred to in Section 1070 of the Evidence Code, who, knowing he is not authorized by law to receive a record or information obtained from a record, knowingly buys, receives, or possesses the record or information is guilty of a misdemeanor.
(Added by Stats.1974, c. 963, p. 2009, § 1.)

Library References
Records ⇐14.
C.J.S. Records § 35 et seq.

§ 11144. Dissemination of statistical or research information from a record

(a) It is not a violation of this article to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(b) It is not a violation of this article to disseminate information obtained from a record for the purpose of assisting in the apprehension of a person wanted in connection with the commission of a crime.

(c) It is not a violation of this article to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.
(Added by Stats.1974, c. 963, p. 2009, § 1.)

Library References
Records ⇐14.
C.J.S. Records § 35 et seq.

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1203. Probation; pre-sentence investigation, report and recommendations; mitigating circumstances; hearing by court; power to grant probation; summary denial in misdemeanor cases; offenses for which probation may not be granted; investigation and report where defendant ineligible; procedure for release to another state

(a) As used in this code, "probation" shall mean the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community. Except as otherwise provided in this code, persons placed on probation by the court shall be under the supervision of the probation officer.

(b) In every case in which a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to the probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment. The probation officer shall immediately investigate and make a written report to the court of his findings and recommendations, including his recommendations as to the granting or denying of probation and the conditions of probation, if granted. The probation officer shall also include in his report his determination of whether the defendant is a person who is required to pay a fine pursuant to Section 13967 of the Government Code. The probation officer shall also include in his report for the court's consideration whether the court shall require, as a condition of probation, restitution to the victim or to the Indemnity Fund if assistance has been granted to the victim pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code, a recommendation thereof, and if so, the amount thereof, and the means and manner of payment. The report shall be made available to the court and the prosecuting and defense attorney at least nine days prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorney which is filed with the court or an oral stipulation in open court which is made and entered upon the minutes of the court. At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer and shall make a statement that it has considered such report which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be subserved by granting probation to the person, it may place him on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections at the prison or other institution to which the person is delivered.

(c) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant.

Stats.1979, c. 1174, Section 2; Stats.1979, c. 1175, Section 2. Amendment of this section by Section 1 of Stats.1978, c. 1262, failed to become operative under the terms of Section 3 of that act.

1203.4 Discharged probationer; change of plea or vacation of verdict; dismissal of charge; release from penalties and disabilities; certificate of rehabilitation and pardon; application; pleading prior conviction in prosecution for subsequent offenses, disclosure

(a) In any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any time after the termination of the period of probation, if he is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his plea of guilty or plea of nolo contendere and enter a plea of not guilty; or, if he has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall thereupon dismiss the accusations or information against the defendant and except as noted below, he shall thereafter be released from all penalties and disabilities resulting from the offense of which he has been convicted, except as provided in Section 13555 of the Vehicle Code. The probationer shall be informed, in his probation papers, of this right and privilege and his right, if any, to petition for a certificate of rehabilitation and pardon. The probationer may make such application and change of plea in person or by attorney, or by the probation officer authorized in writing; provided, that, in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed; and provided further that the order shall state, and the probationer shall be informed, that the order does not relieve him of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office or for licensure by any state or local agency.

Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess, or have in his custody or control any firearm capable of being concealed upon the person or prevent his conviction under Section 12021.

This subdivision shall apply to all applications for relief under this section which are filed on or after November 23, 1970.

(b) Subdivision (a) of this section does not apply to any misdemeanor which is within the provisions of subdivision (b) of Section 42001 of the Vehicle Code, or to any infraction.

Section 1; Stats.1979, c. 199, Section 6.

1203.45 Petition for order sealing records; exceptions

(a) In any case in which a person was under the age of 18 years at the time of commission of a misdemeanor and is eligible for, or has previously received, the relief provided by Section 1203.4 or 1203.4a, such person, in a proceeding under Section 1203.4 or 1203.4a, or a separate proceeding, may petition the court for an order sealing the record of conviction and other official records in the case, including records of arrests resulting in the criminal proceeding and records relating to other offenses charged in the accusatory pleading, whether defendant was acquitted or charges were dismissed. If the court finds that such person was under the age of 18 at the time of the commission of the misdemeanor, and is eligible for relief under Section 1203.4 or 1203.4a or has previously received such relief, it may issue its order granting the relief prayed for. Thereafter such conviction, arrest, or other proceeding shall be deemed not to have occurred, and the petitioner may answer accordingly any question relating to their occurrences.

(b) This section applies to convictions which occurred before, as well as those which occur after, the effective date of this section.

(c) This section shall not apply to offenses for which registration is required under Section 290, to violations of Division 10 (commencing with Section 11000) of the Health and Safety Code, or to misdemeanor violations of the Vehicle Code relating to operation of a vehicle or of any local ordinance relating to operation, standing, stopping, or parking of a motor vehicle.

(d) This section does not apply to a person convicted of more than one offense, whether the second or additional convictions occurred in the same action in which the conviction as to which relief is sought occurred or in another action, except in the following cases:

(1) One of the offenses includes the other or others.

(2) The other conviction or convictions were for the following:

(i) Misdemeanor violations of Chapters 1 (commencing with Section 21000) to 9 (commencing with Section 22500), inclusive, or Chapters 12 (commencing with Section 23100) to 14 (commencing with Section 23340), inclusive, of Division 11 of the Vehicle Code, other than Sections 23101 to 23108, inclusive, or Section 23121.

(ii) Violation of any local ordinance relating to the operation, stopping, standing, or parking of a motor vehicle.

(3) The other conviction or convictions consisted of any combination of paragraphs (1) and (2).

(e) This section shall apply in any case in which a person was under the age of 21 at the time of the commission of an offense as to which this section is made applicable if such offense was committed prior to March 7, 1973.

(f) In any action or proceeding based upon defamation, a court, upon a showing of good cause, may order any records sealed under this section to be opened and admitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person who is authorized by the court to inspect them. Upon the judgment in the action or proceeding becoming final, the court shall order the records sealed.

Amended by Stats. 1972 c. 579, p. 1006, Section 38; Stats, 1974, c. 401, p. 987, Section 2.

13300. Furnishing to authorized persons; fingerprints on file without criminal history; fees

(a) As used in this section:

(1) "Local summary criminal history information" means the master record of information compiled by any local criminal justice agency pursuant to Chapter 2 (commencing with Section 13100), of Title 3 of Part 4 of the Penal Code pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about such person.

(2) "Local summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than that local agency, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the local agency.

(3) "Local agency" means a local criminal justice agency.

(b) A local agency shall furnish local summary criminal history information to any of the following, when needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, the provisions of Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state as defined in Section 830.1, subdivisions (a) and (b) of Section 830.2, subdivisions (a), (b), and (j) of Section 830.3, subdivisions (a), (b), and (c) of Section 830.5, and Section 830.5a.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) Probation officers of the state.

(6) Parole officers of the state.

(7) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(8) A public defender or attorney of record when representing a person in a criminal case and when authorized access by statutory or decisional law.

(9) Any agency, officer, or official of the state when such criminal history information is required to implement a statute, a regulation, or an ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(10) Any city or county, or city and county, or district, or any officer, or official thereof when access is needed in order to assist such agency, officer, or official in fulfilling employment certification, or licensing duties, and when such access is specifically authorized by the city council, board of supervisors or governing board of the city, county, or district when such criminal history information is required to implement a statute, a regulation, or an ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(11) The subject of the local summary criminal history information.

(12) Any person or entity when access is expressly authorized by statute when such criminal history information is required to implement a statute, a regulation , or an ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(13) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(c) The local agency may furnish local summary criminal history information, upon a showing of a compelling need, to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, the provisions of Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) Any public utility as defined in Section 216 of the Public Utilities Code which operates a nuclear energy facility when access is needed in order to assist in employing persons to work at such facility, provided that, if the local agency supplies such data, it shall furnish a copy of such data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To a peace officer of another country.

(4) To public officers (other than peace officers) of the United States, other states, or possessions or territories of the United States, provided that access to records similar to local summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States when such information is needed for the performance of their official duties.

(5) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the local summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(6) The courts of the United States, other states or territories or possessions of the United States.

(7) Peace officers of the United States, other states, or territories or possessions of the United States.

(8) To any individual who is the subject of the record requested when needed in conjunction with an application to enter the United States or any foreign nation.

(d) Whenever an authorized request for local summary criminal history information pertains to a person whose fingerprints are on file with the local agency and the local agency has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying such request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever local summary criminal history information furnished pursuant to this section is to be used for employment, licensing, or certification purposes, the local agency shall charge the person or entity making the request a fee which it determines to be sufficient to reimburse the local agency for the cost of furnishing such information, provided that no fee shall be charged to any public law enforcement agency for local summary criminal history information furnished to assist it in employing, licensing, or certifying a person who is applying for employment with the agency as a peace officer, or criminal investigator. Any state agency required to pay a fee to the local agency for information received under this section may charge the applicant a fee sufficient to reimburse the agency for such expense.

(f) Whenever there is a conflict, the processing of criminal fingerprints shall take priority over the processing of applicant fingerprints.

(g) It is not a violation of this article to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this article to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

Added by Stats. 1975, c. 1222, Section 6, operative July 1, 1978.
Amended by Stats. 1978, c. 475, Section 2.

California Welfare and Institutions Code

389. Petition for sealing records; notice; hearing; grounds for and effect of order; inspection of records

(a) In any case in which a petition has been filed with a juvenile court to commence proceedings to adjudge a person a dependent child of the court, in any case in which a person is cited to appear before a probation officer or is taken before a probation officer pursuant to Section 307, or in any case in which a minor is taken before any officer of a law enforcement agency, the person or the county probation officer may, five years or more after the jurisdiction of the juvenile court has terminated as to the person, or, in a case in which no petition is filed, five years or more after the person was cited to appear before a probation officer or was taken before a probation officer pursuant to Section 307 or was taken before any officer of a law enforcement agency, or, in any case, at any time after the person has reached the age of 18 years, petition the court for sealing of the records, including records of arrest, relating to the person's case, in the custody of the juvenile court and probation officer and any other agencies, including law enforcement agencies, and public officials as petitioner alleges, in his petition, to have custody of such records. The court shall notify the district attorney of the county and the county probation officer, if he is not the petitioner of the petition, and such district attorney or probation officer or any of their deputies or any other person having relevant evidence may testify at the hearing on the petition. If, after hearing, the court finds that since such termination of jurisdiction or action pursuant to Section 307, as the case may be, he has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court, it shall order sealed all records, papers, and exhibits in the person's case in the custody of the juvenile court, including the juvenile court record, minute book entries, and entries on dockets, and other records relating to the case in the custody of such other agencies and officials as are named in the order.

Thereafter, the proceedings in such case shall be deemed never to have occurred, and the person may properly reply according to any inquiry about the events, records of which are ordered sealed. The court shall send a copy of the order to each agency and official named therein, and each such agency and official shall seal records in its custody as directed by the order, shall advise the court of its compliance, and thereupon shall seal the copy of the court's order for sealing of records that it or he received. The person who is the subject of records sealed pursuant to this section may petition the superior court to permit inspection of the records by persons named in the petition, and the superior court may so order. Otherwise, except as provided in subdivision (b), such records shall not be open to inspection.

(b) In any action or proceeding based upon defamation, a court, upon a showing of good cause, may order any records sealed under this section to be opened and admitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person who is authorized by the court to inspect them. Upon the judgment in the action or proceeding becoming final, the court shall order the records sealed.

Added by Stats.1976, c. 1068, p. --, Section 12.

781. Petition for sealing records; notice; hearing, grounds for and effect of order; inspection of records

(a) In any case in which a petition has been filed with a juvenile court to commence proceedings to adjudge a person a * * * ward of the court, in any case in which a person is cited to appear before a probation officer or is taken before a probation officer pursuant to Section 626, or in any case in which a minor is taken before any officer of a law enforcement agency, the person or the county probation officer may, five years or more after the jurisdiction of the juvenile court has terminated as to the person, or, in a case in which no petition is filed, five years or more after the person was cited to appear before a probation officer or was taken before a probation officer pursuant to Section 626 or was taken before any officer of a law enforcement agency, or, in any case, at any time after the person has reached the age of 18 years, petition the court for sealing of the records, including records of arrest, relating to the person's case, in the custody of the juvenile court and probation officer and any other agencies, including law enforcement agencies, and public officials as petitioner alleges, in his petition, to have custody of such records. The court shall notify the district attorney of the county and the county probation officer, if he is not the petitioner of the petition, and such district attorney or probation officer or any of their deputies or any other person having relevant evidence may testify at the hearing on the petition. If, after hearing, the court finds that since such termination of jurisdiction or action pursuant to Section 626, as the case may be, he has not been convicted of a felony or of any misdemeanor involving moral turpitude and

that rehabilitation has been attained to the satisfaction of the court, it shall order sealed all records, papers, and exhibits in the person's case in the custody of the juvenile court, including the juvenile court record, minute book entries, and entries on dockets, and other records relating to the case in the custody of such other agencies and officials as are named in the order. Thereafter, the proceedings in such case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events, records of which are ordered sealed. The court shall send a copy of the order to each agency and official named therein and each such agency and official shall seal records in its custody as directed by the order, shall advise the court of its compliance, and thereupon shall seal the copy of the court's order for sealing of records that it or he received. The person who is the subject of records sealed pursuant to this section may petition the superior court to permit inspection of the records by persons named in the petition, and the superior court may so order. Otherwise, except as provided in subdivision (b), such records shall not be open to inspection.

(b) In any action or proceeding based upon defamation, a court, upon a showing of good cause, may order any records sealed under this section to be opened and admitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person who is authorized by the court to inspect them. Upon the judgment in the action or proceeding becoming final, the court shall order the records sealed.

Asterisks * * * indicate deletions by amendment.

826.5 Destruction of records, papers and exhibits; microfilm or photocopies; reproductions as originals

(a) Notwithstanding the provisions of * * * Section 826, at any time within a period of five years after the jurisdiction of the juvenile court over a minor is terminated, the judge or clerk of the juvenile court or the probation officer may destroy all records and papers, the juvenile court record, any minute book entries, dockets, and judgment dockets in the proceedings concerning the minor if the records and papers, juvenile court record, any minute book entries, dockets, and judgment dockets are microfilmed or photocopied prior to destruction. Exhibits shall be destroyed as provided under Sections 1418, 1418.5, and 1419 of the Penal Code. For the purposes of this section, "destroy" means destroy or dispose of for the purpose of destruction.

(b) * * * Every reproduction shall be deemed and considered an original. A transcript, exemplification, or certified copy of any reproduction shall be deemed and considered a transcript, exemplification, or certified copy, as the case may be, of the original.

Added by Stats.1974, c. 223, p. 421, Section 3. Amended by Stats.1977, c. 239, p. --, Section 2.

827. Inspection of petition and reports of probation officer

Except as provided in Section 828, a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in any such case or made available to the probation officer in making his report, or to the judge, referee or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer, may be inspected only by court personnel, the minor who is the subject of the proceeding, his parents or guardian, the attorneys for such parties, and such other persons as may be designated by court order of the judge of the juvenile court upon filing a petition therefor.

Amended by Stats.1972, c. 1139, p.2206, Section 1.

828. Disclosure of information gathered by law enforcement agency

Except as provided in * * * Sections 389 and 781 of this code or 1203.45 of the Penal Code, any information gathered by a law enforcement agency relating to the taking of a minor into custody may be disclosed to another law enforcement agency, or to any person or agency which has a legitimate need for the information for purposes of official disposition of a case. When the disposition of a taking into custody is available, it must be included with any information disclosed.

Added by Stats.1972, c. 1139, p. 2206, Section 2. Amended by Stats.1976, c. 1068, p. --, Section 73.

California Evidence Code

1040. Privilege for official information.

(a) As used in this section, "official information" means information acquired in confidence by a public employee in the course of his duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made.

(b) A public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing such information, if the privilege is claimed by a person authorized by the public entity to do so and:

(1) Disclosure is forbidden by an act of the Congress of the United States or a statute of this state; or

(2) Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice; but no privilege may be claimed under this paragraph if any person authorized to do so has consented that the information be disclosed in the proceeding. In determining whether disclosure of the information is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered. (Stats.1965, c. 299, Section 1040.)

Comment--Assembly Committee on Judiciary

Under existing law, official information is protected either by sub-division 5 of Code of Civil Procedure Section 1881 (which, like Section 1040, prohibits disclosure when the interest of the public would suffer thereby) or by specific statutes such as the provisions of the Revenue and Taxation Code prohibiting disclosure of information reported in tax returns. See, e.g., Rev. & Tax. Code Section 19281-19289. Section 1881 is superseded by the Evidence Code, but the specific statutes protecting official information remain in effect. Evidence Code Section 1040(b)(1).

Section 1040 permits the official information privilege to be invoked by the public entity or its authorized representative. Since the privilege is granted to enable the government to protect its secrets, no reason exists for permitting the privilege to be exercised by persons who are not concerned with the public interest. It should be noted, however, that another statute may provide a person with a privilege not to disclose a report he made to the government; the Evidence Code has no effect on that privilege. See the Comment to Evidence Code Section 920. Where the government has received a report from an informant, the official information privilege may apply to that report. It does not apply, however, to the knowledge of the informant. The government does not acquire a privilege to prevent an informant from revealing his knowledge merely because that knowledge has been communicated to the government.

The official information privilege provided in Section 1040 does not extend to the identity of an informer. Section 1041 provides special rules for determining when the government has a privilege to keep secret the identity of an informer.

The privilege may be asserted to prevent testimony by anyone who has official information. This provides the public entity with more protection than existing law. See the Comment to Evidence Code Section 954 (attorney-client privilege).

Official information is absolutely privileged if its disclosure is forbidden by either a federal or state statute. Other official information is subject to a conditional privilege: The judge must determine in each instance the consequences to the public of disclosure and the consequences to the litigant of nondisclosure and then decide which outweighs the other. He should, of course, be aware that the public has an interest in seeing that justice is done in the particular cause as well as an interest in the secrecy of the information.

 BEST DOCUMENT AVAILABLE

California Education Code

45123. Employment after conviction of sex offense or narcotics offense

No person shall be employed or retained in employment by a school district who has been convicted of any sex offense as defined in Section 44010 or narcotics offense as defined in Section 44011. If, however, any such conviction is reversed and the person is acquitted of the offense in a new trial or the charges against him are dismissed, this section does not prohibit his employment thereafter.

Nothing in this section shall prohibit the employment by a school district of a person convicted of a narcotics offense involving the use or possession of marijuana if the governing board of the school district determines, from the evidence presented, that the person has been rehabilitated for at least five years.

The governing board shall determine the type and manner of presentation of the evidence, and the determination of the governing board as to whether or not the person has been rehabilitated is final.

Notes of Decision

The board of education was not precluded from discharging a teacher for a sex offense despite his acquittal of the criminal charge for such offense in view of provision of this section that no person shall be employed or retained by school district who has been convicted of any sex offense but if conviction is reversed and person is acquitted this section does not prohibit his employment thereafter, thus making optional at discretion of board the retention of an employee who has first been convicted of a sex offense and ultimately acquitted, the same rule applying to anyone who has been acquitted ab initio. Board of Ed. of El Monte School Dist. of Los Angeles County v. Calderon (1973) 110 Cal.Rptr. 916, 35 C.A.3d 490.

A conviction following a plea of nolo contendere under Pen.C., Section 1016, as amended in 1963, should be deemed a conviction within the meaning of Educ.C., Sections 12911, 13129 (repealed) 13130 (repealed), 13206, 13207, 13217, 13218, 13255 and this section, which authorize revocation of a credential only upon conviction of certain specified offenses under California law. 44 Ops.Atty.Gen. 163, 12-22-64.

The date of conviction, final conviction, or suspesion or imposition of sentence for sex offense as defined in Section 12912, is immaterial so far as action to be taken against such person by state board of education is concerned. 20 Ops.Atty.Gen. 10.

45124. Employment of sexual psychopath

No person shall be employed or retained in employment by a school district who has been determined to be a sexual psychopath under the provisions of Article 1 (commencing with Section 6300), Chapter 2, Part 2, Division 6 of the

Welfare and Institutions Code or under similar provisions of law of any other state. If, however, such determination is reversed and the person is determined not to be a sexual psychopath in a new proceeding or the proceeding to determine whether he is a sexual psychopath is dismissed, this section does not prohibit his employment thereafter.

45125. Use of personal identification cards to ascertain conviction of crime

The governing board of any school district shall, within 10 working days of date of employment, require each person to be employed, or employed in a position not requiring certification qualifications to have two 8"x8" fingerprint cards bearing the legible rolled and flat impressions of such person's fingerprints together with a personal description of the applicant or employee, as the case may be, prepared by a local public law enforcement agency having jurisdiction in the area of the school district, which agency shall transmit such cards, together with the fee hereinafter specified, to the Department of Justice; except that any district, or districts with a common board; may process the fingerprint cards in the event the district so elects. "Local public law enforcement agency" as used herein includes any school district and as used in Section 45126 requires the Department of Justice to provide to any such district, upon application, information pertaining only to applicants for employment by the district, including applicants who are employees of another district, and persons already employed by the district. Upon receiving such identification cards, the Department of Justice shall ascertain whether the applicant or employee has been arrested or convicted of any crime insofar as such fact can be ascertained from information available to the department and forward such information to the local public law enforcement agency submitting the applicant's or employee's fingerprints at the earliest possible date. At its discretion, the Department of Justice may forward one copy of the fingerprint cards submitted to any other bureau of investigation it may deem necessary in order to verify any record of previous arrests or convictions of the applicant or employee.

The governing board of each district shall forward a request to the Department of Justice indicating the number of current employees who have not completed the requirements of this section. The Department of Justice shall direct when such cards are to be forwarded to it for processing which in no event shall be later than two years from the date of enactment of this section. Districts which have previously submitted identification cards for current employees to either the Department of Justice or the Federal Bureau of Investigation shall not be required to further implement the provisions of this section as it applies to those employees.

A plea or verdict of guilty or a finding of guilt by a court in a trial without a jury or forfeiture of bail is deemed to be a conviction within the meaning of this section, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the withdrawal of the plea of guilty and entering of a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusations or information.

The governing board shall provide the means whereby the identification cards may be completed and shall charge a fee determined by the Department of Justice to be sufficient to reimburse the department for the costs incurred in processing the application. The amount of such fee shall be forwarded to the Department of Justice, with two copies of applicant's or employee's fingerprint cards. The

governing board may collect an additional fee not to exceed two dollars ($2) payable to the local public law enforcement agency taking the fingerprints and completing the data on the fingerprint cards. Such additional fees shall be transmitted to the city or county treasury. If an applicant is subsequently hired by the board within 30 days of the application, such fee may be reimbursed to the applicant. Funds not reimbursed applicants shall be credited to the general fund of the district. If the fingerprint cards forwarded to the Department of Justice are those of a person already in the employ of the governing board, the district shall pay the fee required by this section, which fee shall be a proper charge against the general fund of the district, and no fee shall be charged the employee.

Notwithstanding the foregoing, substitute and temporary employees, employed for less than a school year, may be exempted from these provisions. The provisions of this section shall not apply to a district, or districts with a common board, which has an average daily attendance of 400,000 or greater, or to a school district wholly within a city and county, unless the governing board of such district or districts, by rule, provides for adherence to this section.

45126. Duty of department of justice to furnish information regarding applicants for employment

Any provision of law to the contrary notwithstanding, the Department of Justice, shall, as provided in Section 45125, furnish, upon application of a local public law enforcement agency all information pertaining to any such person of whom there is a record in its office.

88022. Employment after conviction of sex offense or narcotics offense

No person shall be employed or retained in employment by a community college district who has been convicted of any sex offense as defined in Section 87010 or narcotics offense as defined in Section 87011. If, however, any such conviction is reversed and the person is acquitted of the offense in a new trial or the charges against him are dismissed, this section does not prohibit his employment thereafter.

Nothing in this section shall prohibit the employment by a district of a person convicted of a narcotics offense involving the use or possession of marijuana if the governing board of the district determines, from the evidence presented, that the person has been rehabilitated for at least five years.

The governing board shall determine the type and manner of presentation of the evidence, and the determination of the governing board as to whether or not the person has been rehabilitated is final.

88023. Employment of sexual psychopath

No person shall be employed or retained in employment by a community college district who has been determined to be a sexual psychopath under the provisions of Article 1 (commencing with Section 6300), Chapter 2, Part 2, Division 6 of the Welfare and Institutions Code or under similar provisions of law of any other state. If, however, such determination is reversed and the person is determined not to be a sexual psychopath in a new proceeding or the proceeding to determine whether he is a sexual psychopath is dismissed, this section does not prohibit his employment thereafter.

88024. Use of personal identification cards to ascertain conviction of crime

The governing board of any community college district shall, within 10 working days of date of employment, require each person to be employed, or employed in, a position not requiring certification qualifications to have two 8"x8" fingerprint cards bearing the legible rolled and flat impressions of such person's fingerprints together with a personal description of the applicant or employee, as the case may be, prepared by a local public law enforcement agency having jurisdiction in the area of the district, which agency shall transmit such cards, together with the fee hereinafter specified, to the Department of Justice; except that a district, or districts with a common board, having an average daily attendance of 60,000 or more may process the fingerprint cards in the event the district so elects. "Local public law enforcement agency" as used herein and in Section 88025 includes a community college district with an average daily attendance of 60,000 or more. Upon receiving such identification cards, the Department of Justice shall ascertain whether the applicant or employee has been arrested or convicted of any crime insofar as such fact can be ascertained from information available to the department and forward such information to the local public law enforcement agency submitting the applicant's or employee's fingerprints at the earliest possible date. At its discretion, the Department of Justice may forward one copy of the fingerprint cards submitted to any other bureau of investigation it may deem necessary in order to verify any record of previous arrests or convictions of the applicant or employee.

The governing board of each district shall forward a request to the Department of Justice indicating the number of current employees who have not completed the requirements of this section. The Department of Justice shall direct when such cards are to be forwarded to it for processing which in no event shall be later than two years from the date of enactment of this section. Districts which have previously submitted identification cards for current employees to either the Department of Justice or the Federal Bureau of Investigation shall not be required to further implement the provisions of this section as it applies to those employees.

A plea or verdict of guilty or a finding of guilt by a court in a trial without a jury or forfeiture of bail is deemed to be a conviction within the meaning of this section, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the withdrawal of the plea of guilty and entering of a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusations or information.

The governing board shall provide the means whereby the identification cards may be completed and shall charge a fee determined by the Department of Justice to be sufficient to reimburse the department for the costs incurred in processing the application. The amount of such fee shall be forwarded to the Department of Justice, with two copies of applicant's or employee's fingerprint cards. The governing board may collect an additional fee not to exceed two dollars ($2) payable to the local public law enforcement agency taking the fingerprints and completing the data on the fingerprint cards. Such additional fees shall be transmitted to the city or county treasury. If an applicant is subsequently hired by the board within 30 days of the application, such fee may be reimbursed to the applicant. Funds not reimbursed applicants shall be credited to the general fund of the district. If the fingerprint cards forwarded to the Department of Justice are those of a person already in the employ of the governing board, the district shall pay the fee required by this section, which fee shall be a proper charge against the general fund of the district, and no fee shall be charged the employee.

Notwithstanding the foregoing, substitute and temporary employees, employed for less than a school year, may be exempted from these provisions. The provisions of this section shall not apply to a district, or districts with a common board, which has an average daily attendance of 400,000 or greater, or to a community college district wholly within a city and county, unless the governing board of such district or districts, by rule, provides for adherence to this section.

88025. Duty of Department of Justice to furnish information regarding applicants for employment

Any provision of law to the contrary notwithstanding, the Department of Justice, shall, as provided in Section 88024, furnish, upon application of a local public law enforcement agency all information pertaining to any such person of whom there is a record in its office.

California Labor Code

ARTICLE 3

CONTRACTS AND APPLICATIONS FOR EMPLOYMENT

432.7 Record of arrest or detention not resulting in conviction or referral or participation in diversion programs; prohibition of disclosure to or use by employer; violations; penalty

(a) No employer whether a public agency or private individual or corporation shall ask an applicant for employment to disclose, through any written form or verbally, information concerning an arrest or detention which did not result in conviction, or information concerning a referral to and participation in any pretrial or posttrial diversion program, now shall any employer seek from any source whatsoever, or utilize, as a factor in determining any condition of employment including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, any record of arrest or detention which did not result in conviction, or any record regarding a referral to and participation in any pretrial or posttrial diversion program. As used in this section, a conviction shall include a plea, verdict, or finding of guilt regardless of whether sentence is imposed by the court. Nothing in this section shall prevent an employer from asking an employee or applicant for employment about an arrest for which the employee or applicant is out on bail or on his or her own recognizance pending trial.

(b) In any case where a person violates any provision of this section, or Article 6 (commencing with Section 11140) of Chapter 1 of Title 1 of Part 4 of the Penal Code, the applicant may bring an action to recover from such person actual damages or two hundred dollars ($200), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section shall entitle the applicant to treble actual damages, or five hundred dollars ($500), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(c) The remedies under this section shall be in addition to and not in derogation of all other rights and remedies which an applicant may have under any other law.

(d) Persons seeking employment as peace officers or for positions in law enforcement agencies with access to criminal offender record information or for positions with the Division of Law Enforcement of the Department of Justice are not covered by this section.

(e) Nothing in this section shall prohibit an employer at a health facility, as defined in Section 1250 of the Health and Safety Code, from asking an applicant for employment either of the following:

(1) With regard to an applicant for a position with regular access to patients, to disclose an arrest under any section specified in Section 290 of the Penal Code.

(2) With regard to an applicant for a position with access to drugs and medication, to disclose an arrest under any section specified in Section 11590 of the Health and Safety Code.

(f)(1) No peace officer or employee of a law enforcement agency with access to criminal offender record information maintained by a local law enforcement criminal justice agency shall knowingly disclose, with intent to affect a person's employment, any information contained therein pertaining to an arrest or detention or proceeding which did not result in a conviction, including information pertaining to a referral to and participation in any pretrial or posttrial diversion program, to any person not authorized by law to receive such information.

(2) No other person authorized by law to receive criminal offender record information maintained by a local law enforcement criminal justice agency shall knowingly disclose any information received therefrom pertaining to an arrest or detention or proceeding which did not result in a conviction, including information pertaining to a referral to and participation in any pretrial or posttrial diversion program, to any person not authorized by law to receive such information.

(3) No person, except those specifically referred to in Section 1070 of the Evidence Code, who knowing he or she is not authorized by law to receive or possess criminal justice records information maintained by a local law enforcement criminal justice agency, pertaining to an arrest or other proceeding which did not result in a conviction, including information pertaining to a referral to and participation in any pretrial or posttrial diversion program, shall receive or possess such information.

(g) "A person authorized by law to receive such information", for purposes of this section, means any person or public agency authorized by a court, statute, or decisional law to receive information contained in criminal offender records maintained by a local law enforcement criminal justice agency, and includes, but is not limited to, those persons set forth in Section 11105 of the Penal Code, and any person employed by a law enforcement criminal justice agency who is required by such employment to receive, analyze, or process criminal offender record information.

(h) Nothing in this section shall require the Department of Justice to remove entries relating to an arrest or detention not resulting in conviction from summary criminal history records forwarded to an employer pursuant to law.

(i) As used in this section, "pretrial or posttrial diversion program" means any program under Chapter 2.5 (commencing with Section 1000) or Chapter 2.7 (commencing with Section 1001) of Title 6 of Part 2 of the Penal Code, Section 13201, 13201.5 or 13352.5 of the Vehicle Code, or any other program expressly authorized and described by statute as a diversion program.

1. In general

State officials were subject to being sued by taxpayer for declaratory and injunctive relief with respect to alleged unconstitutional policy of routinely disseminating to public employers arrest records containing solely nonconviction data and arrest records containing nonconviction data and conviction data without first deleting reference to nonconviction data. Central Valley Chapter of 7th Step Foundation, Inc. v. Younger (App.1979) 157 Cal.Rptr. 117.

2. Pleadings

Allegations of complaint that arrest records were commonly misinterpreted by public employers, that subjects of those records suffered damage to their reputation and were stigmatized and exposed to unnecessary and unjustified public harassment and humiliation, and that there was widespread discrimination against individuals with arrest records in obtaining employment were sufficient to state a prima facie violation of state constitutional right of privacy with respect to policy of state officials in routinely disseminating to public employers arrest records containing solely nonconviction data and arrest records containing nonconviction data and conviction data without first deleting reference to nonconviction data. Central Valley Chapter of 7th Step Foundation, Inc. v. Younger (App.1979) 157 Cal.Rptr. 117.

3. Injunctions

Injunctive relief was available against state officials to enjoin them from continuing alleged unconstitutional policy of routinely disseminating to public employers arrest records containing solely nonconviction data and arrest records containing nonconviction data and conviction data without first deleting reference to nonconviction data. Central Valley Chapter of 7th Step Foundation, Inc. v. Younger (App. 1979) 157 Cal.Rptr. 117.

432.8 Limitations on employers and penalties for certain convictions

The limitations on employers and the penalties provided for in Section 432.7 shall apply to a conviction for violation of subdivision (b) or (c) of Section 11357 of the Health and Safety Code or a statutory predecessor thereof, or subdivision (c) of Section 11360 of the Health and Safety Code, or Section 11364, 11365, or 11550 of the Health and Safety Code as they related to marijuana prior to January 1, 1976, or a statutory predecessor thereof, two years from the date of such a conviction.

Added by Stats.1976, c. 952, p.2180, Section 3.

BEST DOCUMENT AVAILABLE

Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	24-32-401 24-72-301	X		X
2. Privacy and Security Council				
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	24-72-305			X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	24-72-305			X
3.12 Authorizes to Private Sector	24-72-305			X
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	24-72-305			X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	24-72-305			X
3.22 Authorizes to Private Sector	24-72-305			X
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	24-72-305			X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	24-72-305			X
3.32 Authorizes to Private Sector	24-72-305			X
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	24-72-301, 303 24-72-306			X X
5. Right to Challenge	24-72-307			X
6. Judicial Review of Challenged Information	24-72-307			X
7. Purging Non-Conviction Information				
8. Purging Conviction Information	24-72-308(8)			X

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information	24-72-308			X
10. Sealing Conviction Information	24-72-308			X
11. Removal of Disqualifications	24-72-308			X
12. Right to State Non-Existence of Record	24-72-308			X
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	24-32-412(3)			X
14.2 Auditing Requirements				
14.3 Other Accuracy/Completeness Requirements	24-72-307			X
15. Dedication				
16. Civil Remedies	30-10-101 24-72-305	X		X
17. Criminal Penalties	24-72-309			X
18. Public Records	24-72-201 24-72-303	X		X
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination	24-72-305(5)			X
22. Security				
22.1 Physical (Building) Security				
22.2 Administrative Security				
22.3 Computer Security				
23. Transaction Logs				
24. Training Employees				
25. Listing of Information Systems	24-30-606 24-30-607	X X		
26. FOIA (Including CJI)	24-72-301 24-72-303			X X
27. FOIA (Excluding CJI)				
28. Central State Repository	24-32-401 24-32-412	X		X

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Colorado Revised Statutes, Title 24, Chapter 32

PART 4

COLORADO BUREAU OF INVESTIGATION

24-32-412. Functions of bureau - legislative review. (1) (c) To establish and maintain fingerprint, crime, criminal, fugitive, stolen property, and other identification files and records; to operate the statewide uniform crime reporting program; and to arrange for scientific laboratory services and facilities for assistance to law enforcement agencies, utilizing existing facilities and services wherever feasible;

(g) (I) To investigate and assist in the prosecution of medicaid fraud and patient abuse as authorized by the federal "Medicare-Medicaid Anti-Fraud and Abuse Amendments", P.L. 95-142, and, in furtherance of such investigation and prosecution, to enter into contracts with other governmental entities for reimbursement of prosecution expenses as authorized by said federal law. The authority granted by this paragraph (g) shall be effective only so long as federal participation in reimbursement of prosecution expenses constitutes at least ninety percent of such expenses unless the general assembly specifically renews such authority for a lesser federal participation. Nothing contained in this paragraph (g) shall extend the bureau's expenditure of state funds beyond ten percent of the original federal grant.

(II) The authority granted to the bureau by this paragraph (g) shall be terminated on July 1, 1983, unless the general assembly votes to renew the legislative mandate of this paragraph (g). Absent a vote to renew this paragraph (g), it shall be repealed on July 1, 1984, and any activities relating to the authority so granted shall cease within a twelve-month period after July 1, 1983.

(3) Any other provision of law to the contrary notwithstanding and except for title 19, C.R.S. 1973, on and after July 1, 1971, in accordance with a program to be established by the bureau, every law enforcement, correctional, and judicial entity, agency, or facility in this state shall furnish to the bureau all arrest, identification, and final charge dispositional information on persons arrested in Colorado for federal, state, or out-of-state criminal offenses and on persons received for service of any sentence of incarceration; except that the provision of information by judicial entities, agencies, and facilities shall be under procedures to be established jointly by the state court administrator and the director of the Colorado bureau of investigation.

(5) To assist the bureau in its operation of the uniform crime reporting program, every law enforcement agency in this state shall furnish such information to the bureau concerning crimes, arrests, and stolen and recovered property as is necessary for uniform compilation of statewide reported crime, arrest, and recovered property statistics. The cost to the law enforcement agency of furnishing such information shall be reimbursed out of appropriations made therefor by the general assembly; except that the general assembly shall make no such reimbursement if said cost was incurred in a fiscal year during which the Colorado crime information center was funded exclusively by state or federal funds.

Source: (1)(c) and (3) amended and (5) added, L. 77, p. 1250, § 3; (1) (g) added, L. 79, p. 897, § 1.

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Colorado Revised Statutes, Title 24, Chapter 72

PART 3

CRIMINAL JUSTICE RECORDS

24-72-301. Legislative declaration. (1) The general assembly hereby finds and declares that the maintenance, access and dissemination, completeness, accuracy, and sealing of criminal justice records are matters of statewide concern and that, in defining and regulating those areas, only statewide standards in a state statute are workable.

(2) It is further declared to be the public policy of this state that criminal justice agencies shall maintain records of official actions, as defined in this part 3, and that such records shall be open to inspection by any person and to challenge by any person in interest, as provided in this part 3, and that all other records of criminal justice agencies in this state may be open for inspection as provided in this part 3 or as otherwise specifically provided by law.

Source: Added, L. 77, p. 1244, § 1.

Destruction of records after complaint dismissed not intent of general assembly. The general assembly does not intend that the physical destruction of criminal arrest records be allowed after dismissal of the complaint. People v. Wright, ___ Colo. App. ___, 598 P.2d 157 (1979).

Remedies of act deemed exclusive. Because the criminal justice records act provides a comprehensive scheme concerning criminal records, the statutory remedies are exclusive for those persons whose records come within the purview of the statute. People v. Wright, ___ Colo. App. ___, 598 P.2d 157 (1979).

Applied in City & County of Denver v. District Court, ___ Colo. ___, 607 P.2d 984 (1980); City & County of Denver v. District Court, ___ Colo. ___, 607 P.2d 985 (1980).

24-72-302. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Arrest and criminal records information" means information reporting the arrest, indictment, or other formal filing of criminal charges against a person; the identity of the criminal justice agency taking such official action relative to an accused person; the date and place that such official action was taken relative to an accused person; the name, birth date, last known address, and sex of an accused person; the nature of the charges brought or the offenses alleged against an accused person; and one or more dispositions relating to the charges brought against an accused person.

(2) "Basic identification information" means the name, birth date, last known address, physical description, sex, and fingerprints of any person.

(3) "Criminal justice agency" means any court with criminal jurisdiction and any agency of the state or of any county, city and county, home rule city and county, home rule city or county, city, town, territorial charter city, governing boards of institutions of higher education, school district, special district, judicial district, or law enforcement authority which performs any activity directly relating to the detection or investigation of crime; the apprehension, pretrial release, posttrial release, prosecution, defense, correctional supervision, rehabilitation, evaluation, or treatment of accused persons or criminal offenders; or criminal identification activities or the collection, storage, or dissemination of criminal justice information.

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(4) "Criminal justice records" means all books, papers, cards, photographs, tapes, recordings, or other documentary materials, regardless of form or characteristics, which are made, maintained, or kept by any criminal justice agency in the state for use in the exercise of functions required or authorized by law or administrative rule.

(5) "Custodian" means the official custodian or any authorized person having personal custody and control of the criminal justice records in question.

(6) "Disposition" means a decision not to file criminal charges after arrest; the conclusion of criminal proceedings, including conviction, acquittal, or acquittal by reason of insanity; the dismissal, abandonment, or indefinite postponement of criminal proceedings; formal diversion from prosecution; sentencing, correctional supervision, and release from correctional supervision, including terms and conditions thereof; outcome of appellate review of criminal proceedings; or executive clemency.

(7) "Official action" means an arrest; indictment; charging by information; disposition; pretrial or posttrial release from custody; judicial determination of mental or physical condition; decision to grant, order, or terminate probation, parole, or participation in correctional or rehabilitative programs; and any decision to formally discipline, reclassify, or relocate any person under criminal sentence.

(8) "Official custodian" means any officer or employee of the state or any agency, institution, or political subdivision thereof who is responsible for the maintenance, care, and keeping of criminal justice records, regardless of whether such records are in his actual personal custody and control.

(9) "Person" means any natural person, corporation, partnership, firm, or association.

(10) "Person in interest" means the person who is the primary subject of a criminal justice record or any representative designated by said person by power of attorney or notarized authorization; except that, if the subject of the record is under legal disability, "person in interest" means and includes his parents or duly appointed legal representative.

Source: Added, L. 77, p. 1244, § 1.

Applied in Berman v. People, 41 Colo. App. 588, 589 P.2d 508 (1978).

24-72-303. Records of official actions required - open to inspection. (1) Every official action as defined in this part 3 shall be recorded by the arresting or criminal justice agency taking the official action. Such records of official actions shall be maintained by the particular criminal justice agency which took the action and shall be open for inspection by any person at reasonable times, except as provided in this part 3 or as otherwise provided by law. The official custodian of any records of official actions may make such rules and regulations with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(2) If the requested record of official action of a criminal justice agency is not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact in writing, if requested by the applicant. In such notification, he shall state, in detail to the best of his knowledge and belief, the agency which has custody or control of the record in question.

(3) If the requested record of official action of a criminal justice agency is in the custody and control of the person to whom application is made, but is in active use or in storage and therefore not available at the time an applicant asks to examine it, the custodian shall forthwith notify the applicant of this fact in writing, if requested by the applicant. If requested by the applicant, the custodian shall set a date and hour within three working days at which time the record will be available for inspection.

Source: Added, L. 77, p. 1246, § 1.

24-72-304. Inspection of criminal justice records. (1) Except for records of official actions which must be maintained and released pursuant to this part 3, all criminal justice records, at the discretion of the official custodian, may be open for inspection by any person at reasonable times, except as otherwise provided by law, and the official custodian of any such records may make such rules and regulations with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(2) If the requested criminal justice records are not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact in writing, if requested by the applicant. In such notification, he shall state, in detail to the best of his knowledge and belief, the reason for the absence of the records from his custody or control, their location, and what person then has custody or control of the records.

(3) If the requested records are not in the custody and control of the criminal justice agency to which the request is directed, but are in the custody and control of a central repository for criminal justice records pursuant to law, the criminal justice agency to which the request is directed shall forward the request to the central repository. If such a request is to be forwarded to the central repository, the criminal justice agency receiving the request shall do so forthwith and shall so advise the applicant forthwith. The central repository shall forthwith reply directly to the applicant.

Source: Added, L. 77, p. 1246, § 1.

24-72-305. Allowance or denial of inspection - grounds - procedure - appeal. (1) The custodian of criminal justice records may allow any person to inspect such records or any portion thereof except on the basis of any one of the following grounds or as provided in subsection (5) of this section:

(a) Such inspection would be contrary to any state statute;

(b) Such inspection is prohibited by rules promulgated by the supreme court or by the order of any court.

(2) to (4) Repealed, L. 78, p. 407, § 4, effective May 5, 1978.

(5) On the ground that disclosure would be contrary to the public interest, and unless otherwise provided by law, the custodian may deny access to records of investigations conducted by or of intelligence information or security procedures of any sheriff, district attorney, or police department or any criminal justice investigatory files compiled for any other law enforcement purpose.

(6) If the custodian denies access to any criminal justice record, the applicant may request a written statement of the grounds for the denial, which statement shall be provided to the applicant within seventy-two hours, shall cite the law or regulation under which access is denied or the general nature of the public interest to be protected by the denial, and shall be furnished forthwith to the applicant.

(7) Any person denied access to inspect any criminal justice record covered by this part 3 may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why said custodian should not permit the inspection of such record. A hearing on such application shall be held at the earliest practical time. Unless the court finds that the denial of inspection was proper, it shall order the custodian to permit such inspection and, upon a finding that the denial was arbitrary or capricious, it may order the custodian to pay the applicant's court costs and attorney fees in an amount to be determined by the court. Upon a finding that the denial of inspection of a record of an official action was arbitrary or capricious, the court may also order the custodian personally to pay to the applicant a penalty in an amount not to exceed twenty-five dollars for each day that access was improperly denied.

Source: Added, L. 77, p. 1246, § 1; IP (1) amended and (2), to (4) repealed L. 78, pp. 403, 407, § § 1, 4.

24-72-306. Copies, printouts, or photographs of criminal justice records - fees authorized. (1) Criminal justice agencies may assess reasonable fees, not to exceed actual costs, including but not limited to personnel and equipment, for the search, retrieval, and copying of criminal justice records and may waive fees at their discretion. Where fees for certified copies or other copies, printouts, or photographs of such records are specifically prescribed by law, such specific fees shall apply. Where the criminal justice agency is an agency or department of any county or municipality, the amount of such fees shall be established by the governing body of the county or municipality.

(2) If the custodian does not have facilities for making copies, printouts, or photographs of records which the applicant has the right to inspect, the applicant shall be granted access to the records for the purpose of making copies, printouts, or photographs. The copies, printouts, or photographs shall be made while the records are in the possession, custody, and control of the custodian thereof and shall be subject to the supervision of such custodian. When practical, they shall be made in the place where the records are kept, but, if it is impractical to do so, the custodian may allow other arrangements to be made for this purpose. If other facilities are necessary, the cost of providing them shall be paid by the person desiring a copy, printout, or photograph of the records. The official custodian may establish a reasonable schedule of times for making copies, printouts, or photographs and may charge the same fee for the services rendered by him or his deputy in supervising the copying, printing out, or photographing as he may charge for furnishing copies under subsection (1) of this section.

Source: Added, L. 77, p. 1248, § 1.

24-72-307. Challenge to accuracy and completeness - appeals. (1) Any person in interest who is provided access to any criminal justice records pursuant to this part 3 shall have the right to challenge the accuracy and completeness of records to which he has been given access, insofar as they pertain to him, and to request that said records be corrected.

(2) If the custodian refuses to make the requested correction, the person in interest may request a written statement of the grounds for the refusal, which statement shall be furnished forthwith.

(3) In the event that the custodian requires additional time to evaluate the merit of the request for correction, he shall so notify the applicant in writing forthwith. The custodian shall then have thirty days from the date of his receipt of the request for correction to evaluate the request and to make a determination of whether to grant or refuse the request, in whole or in part, which determination shall be forthwith communicated to the applicant in writing.

(4) Any person in interest whose request for correction of records is refused may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why he should not permit the correction of such record. A hearing on such application shall be held at the earliest practical time. Unless the court finds that the refusal of correction was proper, it shall order the custodian to make such correction, and, upon a finding that the refusal was arbitrary or capricious, it may order the criminal justice agency for which the custodian was acting to pay the applicant's court costs and attorney fees in an amount to be determined by the court.

Source: Added, L. 77, p. 1248, § 1.

24-72-308. Sealing or limiting release of records. (1) (a) Any person in interest may petition the district court of the district in which the arrest and criminal records information pertaining to him is located for the sealing of all or any part of said record, except basic identification information.

(b) Any person in interest may petition the court in which the arrest and criminal records information pertaining to him is located for the limiting of release of all or any part of said record, except basic identification information. If a criminal action has previously been filed in a court, the petition provided for in this paragraph (b) shall be made a part of such action, and no additional docket fee shall be required. Such a petition shall be filed pursuant to and shall be governed by the provisions of subsection (1.1) of this section.

(1.1) (a) An order limiting the release of all or any part of said record may be obtained if:

(I) The record is a record of an official action involving conviction for a misdemeanor or a petty offense after which the individual has not been formally charged with another crime, other than a petty offense or a class 3 or class 4 misdemeanor traffic offense, for a period of five years following completion of sentence or satisfaction of conditions imposed in lieu of sentence; or

(II) The record is a record of an official action involving conviction for a felony after which the individual has not been formally charged with a crime, other than a petty offense or a class 3 or class 4 misdemeanor traffic offense, for a period of seven years following completion of sentence or satisfaction of conditions imposed in lieu of sentence.

(b) The state court administrator shall prepare and distribute to the clerks of the courts a standardized form to be used for all petitions for the limiting of release of said records. The clerks shall make the form available at their offices and upon request shall mail the form to any person requesting the same.

(c) Within five days of the receipt of such a form which has been completed and notarized, the clerk of the court shall send copies thereof to the district attorney.

(d) If the district attorney does not file a response objecting to the petition for the limiting of release of said records within thirty days after receipt of the petition by the clerk of the court, the court shall grant the petition and order that the record shall only be released to the person in interest or to a criminal justice agency of this state or to a similar agency of the United States government or any of the states of the United States of America. This order shall be made and entered without further action by the petitioner and without his appearance.

(e) (I) If the district attorney files a response objecting to the petition for the limiting of release of said records within thirty days after receipt of the petition by the clerk of the court, stating that he can show unto the court that the provisions of paragraph (a) of this subsection (1.1) do not apply to the petitioner, the court shall deny the petition unless the petitioner files a written request for a hearing thereon within sixty days after the original date of receipt of the petition by the clerk of the court.

(II) At the time of filing the response objecting to the petition, the district attorney shall serve upon the petitioner a copy of the response and a notice indicating to the petitioner that his petition will be denied unless he files a written request for a hearing within sixty days after the original date of receipt of the petition by the clerk of the court.

(f) If a request for a hearing is received within the sixty-day period, the court shall set a date for a hearing, which hearing may be closed at the court's discretion, and notify the petitioner and the district attorney of the date of said hearing. At the hearing, the court shall grant the petition unless the district attorney shows that none of the provisions of paragraph (a) of this subsection (1.1) apply to the petitioner. Upon granting the petition, the court shall order that the record shall only be released to the person in interest or to a criminal justice agency of this state or to a similar agency of the United States government or any of the states of the United States of America. The hearing shall be held and the petition granted or denied whether or not the petitioner appears.

(g) The response and notice required by paragraph (e) of this subsection (1.1) and the notification required by paragraph (f) of this subsection (1.1) shall be served upon the petitioner by depositing the same in the United States mail, postage prepaid, certified, and return receipt requested, addressed to the petitioner at the address provided in the petition.

(h) Any order entered pursuant to this subsection (1.1) shall be directed to every custodian who may have custody of any part of arrest and criminal records information which is the subject of the order. Whenever a court enters an order pursuant to this subsection (1.1), it shall provide the Colorado bureau of investigation with a copy thereof. The Colorado bureau of investigation shall forward copies of such an order to every custodian which has furnished information to it pursuant to section 24-32-412 (3) concerning the subject of the order.

(i) Every custodian of the arrest and criminal records information subject to the order, within thirty days after entry of the order unless it is stayed pending an appeal, shall advise the court and the petitioner in writing of compliance with the order.

(j) Court orders sealing or limiting the release of records of official actions entered pursuant to this section shall not limit the operation of rules of discovery promulgated by the supreme court of Colorado.

(k) All arrest and criminal records information, whether existing prior to or after May 5, 1978, except basic identification information, is subject to an order limiting the release thereof in accordance with this subsection (1.1).

(1.2) (a) A court shall enter an order limiting access to arrest and criminal records information when the record is a record of an official action in which the individual is acquitted or in which the charges are dismissed. The order shall be entered as a matter of course, upon the court's own motion, thirty days after the dismissal or acquittal unless the defendant requests in writing or in open court that the record remain open. The defendant may subsequently withdraw the request that the record remain open by submitting a written authorization to the court to enter the order. Upon receipt of such an authorization, the court shall enter the order. The provisions of paragraphs (h) and (j) of subsection (1.1) of this section shall apply to any order entered pursuant to this paragraph (a).

(b) An order limiting access to arrest and criminal records information entered pursuant to this subsection (1.2) shall state that the record shall only be released to the person in interest or to a criminal justice agency of this state or to a similar agency of the United States government or any of the states of the United States of America.

(1.3) (a) The custodian of any record of an arrest shall not allow inspection of the record of that arrest if the records in his custody and control do not show that the arrest was followed by the commencement of a trial thereon within two years after the arrest or was followed by a disposition prior to a trial within two years after the arrest; except that, subject to the provisions of subsections (1.1) and (1.2) of this section, the custodian shall allow the inspection of such a record if the person seeking the inspection provides information to the custodian which shows that the arrest has been followed by the commencement of a trial within two years after the arrest or has been followed by a disposition prior to a trial within two years after the arrest.

(b) For the purposes of this subsection (1.3), "disposition" includes deferred prosecution and deferred sentencing.

(c) This subsection (1.3) shall not restrict the right of the person in interest to inspect his own records, nor shall it deny access thereto by a criminal justice agency of this state or by a similar agency of the United States government or any of the states of the United States of America.

(2) Upon the filing of a petition or the entering of a court order relating to the sealing of records, the court shall set a date for a hearing, which hearing may be closed at the court's discretion, and shall notify the district attorney, the arresting agency, and any other person or agency who the court has reason to believe may have relevant information related to the sealing of such record.

(3) (a) Upon a finding that the harm to privacy of the person in interest or dangers of unwarranted adverse consequences outweigh the public interest in retaining the records, the court may order such records, or any part thereof except basic identification information, to be sealed. If the court finds that neither sealing of the records nor maintaining of the records unsealed by the agency would serve the ends of justice, the court may enter an appropriate order limiting access to such records.

(b) Any order entered pursuant to this subsection (3) shall be directed to every custodian who may have custody of any part of arrest and criminal records information which is the subject of the order. Whenever a court enters an order pursuant to this subsection (3), it shall provide the Colorado bureau of investigation with a copy thereof. The Colorado bureau of investigation shall forward copies of such an order to every custodian which has furnished information to it pursuant to section 24-32-412 (3) concerning the subject of the order.

(c) Every custodian of the arrest and criminal records information subject to the order, within thirty days after entry of the order unless it is stayed pending an appeal, shall advise the court and the petitioner in writing of compliance with the order.

(4) Upon the entry of an order to seal the records, or any part thereof, the subject official actions shall be deemed never to have occurred, and the person in interest and all criminal justice agencies may properly reply, upon any inquiry in the matter, that no such action ever occurred and that no such record exists with respect to such person.

(5) Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person in interest who is the subject of such records or by the district attorney and only to those persons and for such purposes named in such petition.

(6) Employers, educational institutions, state and local government agencies, officials, and employees shall not, in any application or interview or otherwise, require an applicant to disclose any information contained in sealed records. An applicant need not, in answer to any question concerning arrest and criminal records information that has been sealed, include a reference to or information concerning such sealed information and may state that no such action has ever occurred. Such an application may not be denied solely because of the applicant's refusal to disclose arrest and criminal records information that has been sealed.

(7) All arrest and criminal records information existing prior to December 31, 1977, except basic identification information, is also subject to sealing in accordance with this part 3.

(8) Nothing in this section shall be construed to authorize the physical destruction of any criminal justice records; except that, upon the petition of a person in interest who has received a pardon after a conviction, the court shall order the physical destruction of the arrest and criminal records information relating to that pardon.

(9) (a) Whenever a defendant has charges against him dismissed, is acquitted, or is sentenced following a conviction, the court shall provide him with a written advisement of his rights concerning the sealing or limiting the release of his criminal justice records if he complies with the applicable provisions of subsections (1) to (3) of this section.

(b) Whenever a defendant completes his sentence or satisfies conditions imposed in lieu of sentence, the person having immediate supervision of the defendant when he is released or the prison facility releasing the defendant shall again provide the defendant a written advisement of his right to petition for an order of court sealing or limiting the release of his criminal justice records if he complies with the applicable provisions of subsections (1) to (3) of this section.

(10) This section shall not apply to records pertaining to any class 2, class 3, or class 4 traffic offense or to any municipal offenses unless a jail term has been imposed.

Source: Added, L. 77, p. 1249, § 1; (1) and (2) amended, (3) (b) R & RE, and (1.1) to (1.3) and (9) added, L. 78, pp. 403, 406, § § 2, 3; (1) (a), (1.1) (e) to (1.1) (f), and (9) amended, and (10) added, L. 79, p. 975, § 1.

Section indicates general assembly's intent to preserve complete criminal justice record, but in a form that protects the individual named from any harmful effects. People v. Wright, ___ Colo. App. ___, 598 P.2d 157 (1979).

Effect of remedy of sealing records. By fashioning the remedy of sealing records, the general assembly did not intend that physical destruction of the records also be allowed in most situations. People v. Wright, ___ Colo. App. ___, 598 P.2d 157 (1979).

Remedy to be initiated in district court. This remedy may not be initiated in an appellate court, but any party in interest can petition the district court to seal the records of a criminal prosecution. Tipton v. City of Lakewood ex rel. People, ___ Colo. ___, 595 P.2d 689 (1979).

24-72-309. Violation - penalty. Any person who willfully and knowingly violates the provisions of this part 3 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

Source: Added, L. 77, p. 1250, § 1.

Applied in People v. Wright, ___ Colo. App. ___, 598 P.2d 157 (1979).

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	54-142j			X
2. Privacy and Security Council				
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	54-142k			X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	54-142k			X
3.12 Authorizes to Private Sector	54-142k			X
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	54-142n			X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	54-142n			X
3.22 Authorizes to Private Sector	54-142n			X
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	54-142k			X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	54-142k			X
3.32 Authorizes to Private Sector	54-142k			X
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	54-142k			X
5. Right to Challenge	54-142l			
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information	54-142a			X
8. Purging Conviction Information	54-142a			X

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information	54-142a			X
10. Sealing Conviction Information	54-142a			X
11. Removal of Disqualifications				
12. Right to State Non-Existence of Record	54-142a			X
13. Research Access	54-142m			X
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	29-11			X
14.2 Auditing Requirements	54-142h(b),(c)			X
14.3 Other Accuracy/Completeness Requirements	54-142h(a) 54-142j			X X
15. Dedication				
16. Civil Remedies	4-197	X		
17. Criminal Penalties	29-17 54-142k(e)	X		X
18. Public Records	1-15 1-19 1-21j	X X X		
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security				
22.1 Physical (Building) Security	54-142i			X
22.2 Administrative Security	54-142i			X
22.3 Computer Security	54-142i			X
23. Transaction Logs	54-142h(c)			X
24. Training Employees	54-142i(d)			X
25. Listing of Information Systems				
26. FOIA (Including CJI)				
27. FOIA (Excluding CJI)	4-190(i)		X	
28. Central State Repository	29-11			X

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Connecticut General Statutes Annotated (West)

CHAPTER 961a

CRIMINAL RECORDS

PART I

ERASURE

Sec. 54-142a. (Formerly Sec. 54-90). Erasure of criminal records. (a) Whenever in any criminal case, on or after October 1, 1969, the accused, by a final judgment, is found not guilty of the charge or the charge is dismissed, all police and court records and records of any state's attorney pertaining to such charge shall be immediately and automatically erased.

(b) Whenever in any criminal case prior to October 1, 1969, the accused, by a final judgment, was found not guilty of the charge or the charge was dismissed, all police and court records and records of the state's or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased by operation of law and the clerk or any person charged with the retention and control of such records shall not disclose to anyone their existence or any information pertaining to any charge so erased; provided nothing in this section shall prohibit the arrested person or any one of his heirs from filing a petition for erasure with the court granting such not guilty judgment or dismissal, or, where the matter had been before a municipal court, a trial justice, the circuit court or the court of common pleas with the office of the chief court administrator and thereupon all police and court records and records of the state's attorney, prosecuting attorney or prosecuting grand juror pertaining to such charge shall be immediately and automatically erased.

(c) Whenever any charge in a criminal case has been nolled in the superior court, or in the court of common pleas, if at least thirteen months have elapsed since such nolle, all police and court records and records of the state's or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased, provided in cases of nolles entered in the superior court, court of common pleas, circuit court, municipal court or by a justice of the peace prior to April 1, 1972, such records shall be deemed erased by operation of law and the clerk or the person charged with the retention and control of such records shall not disclose to anyone their existence or any information pertaining to any charge so erased; provided nothing in this section shall prohibit the arrested person or any one of his heirs from filing a petition to the appropriate court or to the office of the chief court administrator, as the case may be, to have such records physically erased, in which case such records shall be erased. Whenever any charge in a criminal case has been continued in the superior court or the court of common pleas, and a period of thirteen months has elapsed since the granting of such continuance during which period there has been no prosecution or other disposition of the matter, the charge shall be construed to have been nolled as of the date of termination of such thirteen-month period and such erasure may thereafter be effected or a petition filed therefor, as the case may be, as provided in this subsection for nolled cases.

(d) Whenever prior to October 1, 1974, any person who has been convicted of an offense in any court of this state has received an absolute pardon for such offense, such person or any one of his heirs may, at any time subsequent to such pardon, file a petition with the court in which such conviction was effected, or with the court having custody of the records of such conviction or with the office of the chief judge of the court of common pleas if such conviction was in the court of common pleas, circuit court, municipal court or by a trial justice court, for an order of erasure, and such court shall order all police and court records and re- ds of the state's or prosecuting attorney pertaining to such case to be erased. W ever such absolute pardon was received on or after October 1, 1974, such records shall be automatically erased.

(e) The clerk of the court or any person charged with retention and control of such records in the office of the chief court administrator or any law enforcement agency having information contained in such erased records shall not disclose to anyone information pertaining to any charge erased under any provision of this section and such clerk or person charged with the retention and control of such records shall forward a notice of such erasure to any law enforcement agency to which he knows information concerning the arrest has been disseminated and such disseminated information shall be erased from the records of such law enforcement agency. Such clerk or such person, as the case may be, shall seal all court records and place them in locked files maintained for this purpose; or upon the request of the accused cause the actual physical destruction of such records. No fee shall be charged in any court with respect to any petition under this section. Any person who shall have been the subject of such an erasure shall be deemed to have never been arrested within the meaning of the general statutes with respect to the proceedings so erased and may so swear under oath.

(f) Upon motion properly brought, the court or a judge thereof, if such court is not in session, (1) may order disclosure of such records to the accused if the court or judge thereof, as the case may be, finds that nondisclosure may be harmful to the accused in a civil action or (2) may order disclosure to a defendant or the accused in an action for false arrest arising out of the proceedings so erased or (3) may order disclosure to the prosecuting attorney and defense counsel in connection with any perjury charges which the prosecutor alleges may have arisen from the testimony elicited during the trial. The court may also order such records disclosed to any hospital or institution to which an accused is confined under the provisions of section 53a-47. Such disclosure of such records is subject also to any records destruction program pursuant to which the records may have been destroyed. The jury charge in connection with erased offenses may be ordered by the judge for use by the judiciary, provided the names of the accused and the witnesses are omitted therefrom.

(g) The provisions of this section shall not apply to any police or court records or the records of any state's attorney or prosecuting attorney with respect to any count of any information which was nolled if the accused was convicted upon one or more counts of the same information and if all such counts arose out of the same transaction and had the same factual basis.

(1949 Rev., S. 8840; 1963, P.A. 482; 642, S. 72; 1967, P.A. 181; 663; 1969, P.A. 229, S. 1; 1971, P.A. 635, S. 1; 1972, P.A. 20, S. 2; P.A. 73-276, S. 1, 2; P.A. 74-52, S. 1, 2; 74-163, S. 1—3; 74-183, S. 152, 291; P.A. 75-541, S. 1, 2; P.A. 76-345; 76-388, S. 4, 6; 76-436, S. 10a, 551, 681; P.A. 77-429; 77-452, S. 40, 41, 42, 72.)

See Secs. 29-15, 46b-146, 54-76o.

Annotations to former Sec. 54-90:

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All police and court records include transcripts of criminal proceedings. 165 C. 152. Prohibition against disclosure of information includes transcripts and applies to everyone. Id.

Cited. 29 CS 333; id., 344; 30 CS 108; id., 181; id., 197; id., 211. Cited. 31 CS 179. Preliminary motions in criminal cases entitled State v. Anonymous in view of this section. 31 CS 292. Preliminary motions in criminal cases titled State of Connecticut v. Anonymous in view of this section. 31 CS 353. Cited. 32 CS 304. Cited. 33 CS 55. Cited. 34 CS 527. Cited. Id., 656.

Cited. 6 Conn. Cir. Ct. 655; id., 667; Id., 751, 752.

Subsec. (c):

Application of statute to claim of denial of right to speedy trial. 174 C. 89, 91, 94.

Subsec. (f):

Subsection must be construed to allow disclosure not only to defendant in action for false arrest but also to defendant in action for malicious prosecution. 33 CS 158.

Sec. 54-142b. (Formerly Sec. 54-90a). Erasure of record of girl found guilty of being in manifest danger. Any person who has been found guilty under section 17-379 or any statute predecessor thereto, if she has been convicted of no other offense prior to her twenty-first birthday, may file a petition with the court by which she was found guilty, or, if such finding was by a trial justice or municipal court or the ciruit court, to the office of the chief court administrator for an order of erasure, and such court shall thereupon order all police and court records and records of the state's or prosecuting attorney pertaining to such case to be erased.

(1971, P.A. 192; P.A. 74-183, S. 153, 291; P.A. 75-567, S. 23, 80; P.A. 76-336, S. 12; 76-436, S. 552, 681; P.A. 77-452, S. 43, 72.)

Sec. 54-142c. Disclosure of erased records. The clerk of the court or any person charged with retention and control of erased records by the chief court administrator or any criminal justice agency having information contained in such erased records shall not disclose to anyone the existence of such erased record or information pertaining to any charge erased under any provision of part II of this chapter, except as provided in part II of this chapter.

(P.A. 78-200, S. 15.)

Sec. 54-142d to 54-142f. Reserved for future use.

PART II

SECURITY AND PRIVACY OF CRIMINAL RECORDS

Sec. 54-142g. Definitions. For purposes of this part and sections 29-11 and 54-142c, the following definitions shall apply:

(a) "Criminal history record information" means information compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender notations of arrests, releases, detentions, indictments, informations, or other formal criminal charges or any events and outcomes arising from those arrests, releases, detentions, including pleas, trials, sentences, appeals, incarcerations, correctional supervision, paroles and releases; but does not include intelligence, presentence investigation or investigative information.

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(b) "Criminal justice agency" means any court with criminal jurisdiction, the department of motor vehicles, or any other governmental agency created by statute which is authorized by law and engages, in fact, as its principal function in activities constituting the administration of criminal justice; including but not limited to, organized municipal police departments, the division of state police, department of correction, office of adult probation, the Connecticut justice commission, state's attorneys, assistant state's attorneys, deputy assistant state's attorneys, parole board, pardon board, bail commissioners, coroners and medical examiner. It shall also include any component of a public, noncriminal justice agency if such component is created by statute and is authorized by law and, in fact, engages as its principal function in activities constituting the administration of criminal justice.

(c) "Conviction information" means criminal history record information which has not been erased, as provided in section 54-142a, and which discloses that a person has pleaded guilty or nolo contendere to, or was convicted of, any criminal offense, and the terms of the sentence.

(d) "Current offender information" means information on the current status and location of all persons who (1) are arrested or summoned to appear in court; (2) are being prosecuted for any criminal offense in superior court; (3) have an appeal pending from any criminal conviction; (4) are detained or incarcerated in any correctional facility in this state; or (5) are subject to the jurisdiction or supervision of any probation, parole or correctional agency in this state, including persons transferred to other states for incarceration or supervision.

(e) "Non-conviction information" means (1) criminal history record information that has been "erased" pursuant to section 54-142a; (2) nolles that have not been erased; (3) information relating to persons granted youthful offender status; (4) any information which has been replaced with a substitute information; (5) continuances which are more than thirteen months old. Non-conviction information does not mean conviction information or current offender information.

(f) "Disclosure" means the communication of information to any person by any means.

(g) "Dismissal" means (1) prosecution of the charge against the accused was declined pursuant to rules of court or statute; or (2) the judicial authority granted a motion to dismiss pursuant to rules of court or statute; or (3) the judicial authority found that prosecution is no longer possible due to the limitations imposed by section 54-193.

(P.A. 78-200, S. 1; 78-303, S. 85, 136.)

Sec. 54-142h. Data collection; audit; maintenance of records and log. (a) All criminal justice agencies that collect, store or disseminate criminal history record information shall institute a process of data collection, entry, storage and systematic audit that will minimize the possibility of recording and storing inaccurate criminal history record information, and shall notify, upon the discovery of any such inaccuracy, all criminal justice agencies known to have received such information.

(b) For the purpose of verifying the completeness and accuracy of criminal history record information collected and maintained by criminal justice information agencies subject to Title 28, Chapter 1, Part 20 of the Code of Federal Regulations, the Connecticut justice commission shall conduct an annual audit of the records maintained by such agencies. Said commission shall provide for a random sample of criminal justice agencies to be audited each year.

(c) Criminal justice agencies subject to such audits shall maintain and retain records that will facilitate such audits, including, but not limited to, the keeping of a log which chronologically records the date non-conviction record information was disclosed, the information disclosed, how or where the information was obtained and the person or criminal justice agency to whom the information was disseminated. Such log shall be maintained for a minimum period of twelve months. It shall not be necessary to log the disclosure of non-conviction record information to any authorized officer or employee within such agency.

(P.A. 78-200, S. 8.)

Sec. 54-142i. Duties of criminal justice agencies re collection, storage or dissemination of criminal history record information. Personnel. All criminal justice agencies which collect, store or disseminate criminal history record information shall:

(a) Screen and have the right to reject for employment, based on good cause, all personnel to be authorized to have direct access to criminal history record information;

(b) Initiate or cause to be initiated administrative action that could result in the transfer or removal of personnel authorized to have direct access to such information when such personnel violate the provisions of these regulations or other security requirements established for the collection, storage or dissemination of criminal history record information;

(c) Provide that direct access to computerized criminal history record information shall be available only to authorized officers or employees of a criminal justice agency, and, as necessary, other authorized personnel essential to the proper operation of a criminal history record information system;

(d) Provide that each employee working with or having access to criminal history record information shall be made familiar with the substance and intent of the provisions in this section;

(e) Whether manual or computer processing is utilized, institute procedures to assure that an individual or agency authorized to have direct access is responsible for the physical security of criminal history record information under its control or in its custody, and for the protection of such information from unauthorized access, disclosure or dissemination. The state police bureau of identification shall institute procedures to protect both its manual and computerized criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind or other natural or man-made disasters;

(f) Where computerized data processing is employed, institute effective and technologically advanced software and hardware designs to prevent unauthorized access to such information and restrict to authorized organizations and personnel only, access to criminal history record information system facilities, systems operating environments, systems documentation, and data file contents while in use or when stored in a media library;

(g) Develop procedures for computer operations which support criminal justice information systems, whether dedicated or shared, to assure that: (1) Criminal history record information is stored by the computer in such a manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion by noncriminal justice terminals; (2) operation programs are used that will prohibit inquiry, record updates, or destruction of records, from any terminal other than criminal justice system terminals which are so designated; (3) the destruction of records is limited to designated terminals under the direct control of the criminal justice agency responsible for creating or storing the crimial history record information; (4) operational programs are used to detect and store for the output of designated criminal justice agency employees all unauthorized attempts to penetrate any criminal history record information system, program or file; (5) the programs specified in subdivisions (2) and (4) of this subsection are known only to criminal justice agency employees responsible for criminal history record information system control or individuals or agencies pursuant to a specific agreement with the criminal justice agency to provide such programs and the programs are kept continuously under maximum security conditions.

(P.A. 78-200, S. 6.)

Sec. 54-142j. Adoption of regulations and procedures. The commissioner of public safety shall adopt regulations to establish procedures for criminal justice agencies to query the central repository prior to dissemination of any criminal history disposition information to assure that the most up to date dispostion data is being used. Inquiries to the state police bureau of identification shall be made prior to any dissemination except in those cases where time is of the essence and the repository is technically incapable of responding within the necessary time period.

(P.A. 78-200, S. 9.)

Sec. 54-142k. Inspection of criminal history records; to whom available. (a) Each person or agency holding criminal history record information shall establish reasonable hours and places of inspection of such information.

(b) Criminal history record information other than non-conviction information, shall be available to the public unless otherwise prescribed by law.

(c) Any person shall, upon satisfactory proof of his identity, be entitled to inspect, for purposes of verification and correction any non-conviction information relating to him and upon his request shall be given a computer printout or photocopy of such information for which a reasonable fee may be charged provided that no erased record may be released except as provided in subsection (j) of section 54-90. Before releasing any exact reproductions of non-conviction information to the subject, the agency holding such information may remove all personal identifying information from it.

(d) Any person may authorize in writing an agency holding non-conviction information pertaining directly to such person to disclose such information to his attorney-at-law. The holding agency shall permit such attorney to inspect and obtain a copy of such information if both his identity and that of his client are satisfactorily established; provided no erased record may be released unless such attorney attests to his client's intention to challenge the accuracy of such record.

(e) Any person who obtains criminal history record information by falsely representing to be the subject of the record shall be guilty of a class D felony.

(P.A. 78-200, S. 10.)

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Sec. 54-142l. Challenge to completeness or accuracy of record. (a) A person may challenge the completeness and accuracy of such information by giving written notice of his challenge to the state bureau of identification and to the agency at which he inspected the information, if other than the state police bureau of identification. The notice shall contain a sworn statement that the information in or supporting the challenge is accurate and that the challenge is made in good faith.

(b) Upon receipt of the notice, the state police bureau of identification shall conduct an audit of the part of such person's criminal history record information which is necessary to determine the accuracy of the challenge, and may require any criminal justice agency which was the source of the challenged information to verify such information. Within sixty days after the notice is received, the state bureau of identification shall notify the person in writing of the results of the audit, and of his right to appeal if the challenge is rejected.

(P.A. 78-200, S. 7.)

Sec. 54-142m. Disclosure of non-conviction information by criminal justice agency. (a) a criminal justice agency holding non-conviction information may disclose it to persons or agencies not otherwise authorized (1) for the purposes of research, evaluation or statistical analysis or (2) if there is a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to such agreement;

(b) No non-conviction information may be disclosed to such persons or agencies except pursuant to a written agreement between the agency holding it and the persons to whom it is to be disclosed;

The agreement shall specify the information to be disclosed, the persons to whom it is to be disclosed, the purposes for which it is to be used, the precautions to be taken to insure the security and confidentiality of the information and the sanctions for improper disclosure or use;

(d) Persons to whom information is disclosed under the provisions of this section shall not without the subject's prior written consent disclose or publish such information in such manner that it will reveal the identity of such subject.

(P.A. 78-200, S. 11.)

Sec. 54-142n. Further provisions for disclosure of non-conviction information. Non-conviction information other than erased information may be disclosed only to: (a) Criminal justice agencies in this and other states and the federal government; (b) agencies and persons which require such information to implement a statute or executive order that expressly refers to criminal conduct; (c) agencies or persons authorized by a court order, statute or decisional law to receive criminal history record information. Whenever a person or agency receiving a request for non-conviction information is in doubt about the authority of the requesting agency to receive such information, the request shall be referred to the state police bureau of investigation.

(P.A. 78-200, S. 13.)

Sec. 54-142o. Dissemination of non-conviction information to noncriminal justice agencies. (a) Non-conviction information disseminated to noncriminal justice agencies shall be used by such agencies only for the purpose for which it was given and shall not be re-disseminated.

(t No agency or individual shall confirm the existence or nonexistence of non-conviction information to any person or agency that would not be eligible to receive the information itself.

(P.A. 78-200, S. 12.)

See Sec. 54-142c.

Sec. 54-142p. Letter of criminal record or no criminal record to enter United States or foreign nation. (a) Any criminal justice agency may furnish criminal history record information or a no criminal record letter to an individual in conjunction with an application to enter the United States or any foreign nation when the subject of the record (1) certified that the information is needed to complete an application to enter the United States or a foreign nation, and (2) provides proof that he is the subject of the record.

(b) The disseminating agency shall certify that the information released is accurate as of ninety days prior to release and is being disclosed only for the purpose of assisting the subject of the record in gaining entry into the United States or a foreign nation.

(P.A. 78-200, S. 14.)

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§ 29–11. State police bureau of identification

The bureau in the division of state police within the department of public safety known as the state police bureau of identification shall be maintained for the purposes (1) of providing an authentic record of each person sixteen years of age or over who is charged with the commission of any crime involving moral turpitude, (2) of providing definite information relative to the identity of each person so arrested, (3) of providing a record of the final judgment of the court resulting from such arrest, unless such record has been erased pursuant to section 54–142a, and (4) for maintaining a central repository of complete criminal history record disposition information. The commissioner of public safety is directed to maintain the state police bureau of identification, which bureau shall receive, classify and file in an orderly manner all fingerprints, pictures and descriptions, including previous criminal records as far as known of all persons so arrested, and shall classify and file in a like manner all identification material and records received from the government of the United States, and from the various state governments and subdivisions thereof, and shall cooperate with such governmental units in the exchange of information relative to criminals. The record of all arrests reported to the bureau after March 16, 1976, shall contain information of any disposition within ninety days after the disposition has occurred.

(1976, P.A. 76–333, § 1; 1977, P.A. 77–614, § 486, eff. Jan. 1, 1979; 1978, P.A. 78–200, § 3.)

1976 Amendment

1976, P.A. 76–333, § 1, changed the name of the state bureau of identification to state police bureau of identification.

1977 Amendment

1977, P.A. 77–614, § 486, eff. Jan. 1, 1979, provided for change of terms from "state police commissioner" or "commissioner of state police" to "commis-

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sioner of public safety", and from "state police department" to "division of state police within the department of public safety".

1978 Amendment

1978, P.A. 78-200, § 3, amended the first sentence by inserting "(1)" following "maintained for the purposes", by deleting "over" following "record of each person", by inserting "or over" following "sixteen years of age", by substituting ", (2)" for "and" following "moral turpitude", by substituting ", (3)" for "and" following "person so arrested", and by adding ", unless such record has been erased pursuant to section 54-90, and (4) for maintaining a central repository of complete criminal history record disposition information" following "resulting from such arrest"; and added the third sentence.

* * * * *

PERSONAL DATA [NEW]

Sec.
4-190. Definitions.
4-191. Repealed.
4-192. Repealed.
4-193. Agency's duties re personal data.
4-194. Refusal to disclose. Medical doctor to review data. Judicial relief.
4-195. Petition to the court for failure to disclose.
4-196. Agencies to adopt regulations.
4-197. Action against agency for violation of chapter.

§ 4-190. Definitions

As used in this chapter:

(a) "Agency" means each state board, commission, department or officer, other than the legislature, courts, governor, lieutenant governor, attorney general or town or regional boards of education, which maintains a personal data system.

(b) "Attorney" means an attorney at law empowered by a person to assert the confidentiality of or right of access to personal data under this chapter.

(c) "Authorized representative" means a parent, or a guardian or conservator, other than an attorney, appointed to act on behalf of a person and empowered by such person to assert the confidentiality of or right of access to personal data under this chapter.

(d) "Automated personal data system" means a personal data system in which data is stored, in whole or part, in a computer or in computer accessible files.

(e) "Computer accessible files" means any personal data which is stored on-line or off-line, which can be identified by use of electronic means, including but not limited to microfilm and microfilm devices, which includes but is not limited to magnetic tape, magnetic film, magnetic disks, magnetic drums, internal memory utilized by any processing device, including computers or telecommunications control units, punched cards, optically scannable paper or film.

(f) "Maintain" means collect, maintain, use or disseminate.

(g) "Manual personal data system" means a personal data system other than an automated personal data system.

(h) "Person" means an individual of any age concerning whom personal data is maintained in a personal data system, or a person's attorney or authorized representative.

(i) "Personal data" means any information about a person's education, finances, medical or emotional condition or history, employment or business history, family or personal relationships, reputation or character which because

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of name, identifying number, mark or description can be readily associated with a particular person. "Personal data" shall not be construed to make available to a person any record described in subdivision (3) of subsection (b) of section 1-19.

(j) "Personal data system" means a collection of records containing personal data.

(k) "Record" means any collection of personal data, defined in subsection (i), which is collected, maintained or disseminated.

(1976, P.A. 76-421, § 1, eff. July 1, 1977; 1977, P.A. 77-431, §§ 1, 2, eff. Jan. 1, 1978; 1978, P.A. 78-200, § 2; 1979, P.A. 79-631, § 5.)

1976, P.A. 76-421, § 9, provided, "This act shall take effect July 1, 1977."

1977 Amendments

1977, P.A. 77-431, § 1, rewrote subsec. (c) which formerly read:

" 'Computer accessible files' means files which contain personal data recorded on magnetic tape, magnetic film, magnetic disks, magnetic drums, punch cards or optically scanable paper or film."

1977, P.A. 77-431, § 2, added subsec. (k).

1977, P.A. 77-431, § 5, provided that:

"Sec. 5. Sections 4-190, as amended by sections 1 and 2 of this act, 4-191, 4-192, 4-193, as amended by section 3 of this act, 4-194, as amended by section 4 of this act, 4-195 and 4-197 shall take effect January 1, 1978, and section 4-196 shall take effect from the passage of this act."

1978 Amendment

1978, P.A. 78-200, § 2, deleted, from the first sentence of subsec. (i), "criminal history," following "emotional condition or history,".

1979 Amendment

1979, P.A. 79-631, § 5, changed, in subsec. (i), internal reference to subd. "(3)" of subsec. (b) of § 1-19 from subd. "(2)" of subsec. (b) of § 1-19.

Law Review Commentaries

Patient's right to records. (1978) 11 Conn.L.Rev. 44.

Library References

Words and Phrases (Perm. Ed.)

§§ 4-191, 4-192. Repealed. (1979, P.A. 79-538, § 2.)

The repealed § 4-191, which prohibited disclosure or transmission of personal data was derived from 1976, P.A. 76-421, § 2; 1977, P.A. 77-431, § 5.

The repealed § 4-192, which prescribed when personal data may be disclosed without permission, was derived from:

1976, P.A. 76-421, § 3.
1977, P.A. 77-431, § 5.
1978, P.A. 78-362, § 2.

§ 4-193. Agency's duties re personal data

Each agency shall:

(a) Inform each of its employees who operates or maintains a personal data system or who has access to personal data, of the provisions of (1) this chapter, (2) the agency's regulations adopted pursuant to section 4-196, (3) chapter 3 and (4) any other state or federal statute or regulation concerning maintenance or disclosure of personal data kept by the agency;

(b) Take reasonable precautions to protect personal data from the dangers of fire, theft, flood, natural disaster or other physical threats:

(c) Keep a complete record, concerning each person, of every individual, agency or organization who has obtained access to or to whom disclosure has been made of personal data pursuant to subsections (b) and (c) of section 4-192, and the reason for each such disclosure or access; and maintain such record for not less than five years from the date of obtaining such access or disclosure or maintain such record for the life of the record, whichever is longer.

(d) Make available to a person, upon written request, the record kept under subsection (c) of this section;

(e) Maintain only that information about a person which is relevant and necessary to accomplish the lawful purposes of the agency;

(f) Inform an individual in writing, upon written request, whether the agency maintains personal data concerning him;

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(g) Except as otherwise provided in section 4-194, disclose to a person, upon written request, on a form understandable to such person, all personal data concerning him which is maintained by the agency. If disclosure of personal data is made under this subsection, the agency shall not disclose any personal data concerning persons other than the requesting person;

(h) Establish procedures which:

(1) Allow a person to contest the accuracy, completeness or relevancy of his personal data;

(2) Allow personal data to be corrected upon request of a person when the agency concurs in the proposed correction;

(3) Allow a person who believes that the agency maintains inaccurate or incomplete personal data concerning him to add a statement to the record setting forth what he believes to be an accurate or complete version of that personal data. Such a statement shall become a permanent part of the agency's personal data system, and shall be disclosed to any individual, agency or organization to which the disputed personal data is disclosed.

(1976, P.A. 76-421, § 4, eff. July 1, 1977; 1977, P.A. 77-431, § 3, eff. Jan. 1, 1978; 1977, P.A. 77-604, §§ 3, 4, eff. July 6, 1977; 1979, P.A. 79-538, § 1.)

1977 Amendments

1977, P.A. 77-431, § 3, added to subsec. (c), "; and maintain such record * * *, whichever is longer." following "disclosure or access"; inserted, in subsec. (d), "written" following "to a person, upon"; and amended subsec. (g), by inserting "written" following "to a person, upon", and by inserting "on a form understandable to such person" following "request".

For effective date of amendment by 1977, P.A. 77-431, see note under § 4-190.

1977, P.A. 77-604, § 3, substituted, in subsec. (a), "chapter" for "act" following "provisions of this".

1977, P.A. 77-604, § 4, substituted, in subsec. (c), "subsections" for "subsection" following "pursuant to".

1979 Amendment

1979, P.A. 79-538, § 1, amended subsec. (a) by inserting "(1)" following "of the provisions of", by substituting "(2)" for "of" following "this chapter,", and by substituting "(3) chapter 3 and (4)" for "and of" following "section 4-196,".

Law Review Commentaries

Patient's right to records. (1978) 11 Conn.L.Rev. 44.

§ 4-194. Refusal to disclose. Medical doctor to review data. Judicial relief

(a) If an agency determines that disclosure to a person of medical, psychiatric or psychological data concerning him would be detrimental to that person, or that nondisclosure to a person of personal data concerning him is otherwise permitted or required by law, the agency may refuse to disclose that personal data, and shall refuse disclosure where required by law. In either case, the agency shall advise that person of his right to seek judicial relief.

(b) If an agency refuses to disclose personal data to a person and the nondisclosure is not mandated by law, the agency shall, at the written request of such person, permit a qualified medical doctor to review the personal data contained in the person's record to determine if the personal data should be disclosed. If disclosure is recommended by the person's medical doctor, the agency shall disclose the personal data to such person; if nondisclosure is recommended by such person's medical doctor, the agency shall not disclose the personal data and shall inform such person of the judicial relief provided under section 4-195.

(1976, P.A. 76-421, § 5, eff. July 1, 1977; 1977, P.A. 77-431, §§ 4, 5, eff. Jan. 1, 1978.)

1977 Amendment

1977, P.A. 77-431, § 4, designated the existing paragraph as subsec. (a), and added subsec. (b).

1977, P.A. 77-431, § 5, provided that: "Sections 4-190, as amended by sections 1 and 2 of this act, 4-191, 4-192, 4-193, as amended by section 3 of this act, 4-194, as amended by section 4 of this act, 4-195 and 4-197 shall take effect January 1, 1978, and section 4-196 shall take effect from the passage of this act."

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§ 4–195. Petition to the court for failure to disclose

If disclosure of personal data is refused by an agency under section 4–194, any person aggrieved thereby may, within thirty days of such refusal, petition the superior court for the county or judicial district in which he resides for an order requiring the agency to disclose the personal data. Such a proceeding shall be privileged with respect to assignment for trial. The court, after hearing and an in camera review of the personal data in question, shall issue the order requested unless it determines that such disclosure would be detrimental to the person or is otherwise prohibited by law.
(1976, P.A. 76–421, § 6, eff. July 1, 1977; 1977, P.A. 77–431, § 5; 1977, P.A. 77–452, § 47, eff. July 1, 1978.)

1977 Amendment

1977, P.A. 77–431, which purported to amend this section, provided, by § 5, that this amendment take effect Jan. 1, 1978.

1977, P.A. 77–452, § 47, substituted, in the first sentence, "superior court" for "court of common pleas" following "of such refusal, petition the".

For effective date of amendment by 1977, P.A. 77–452, see note under § 11–19c.

§ 4–196. Agencies to adopt regulations

Each agency shall, within six months of July 1, 1977, adopt regulations pursuant to chapter 54 which describe:

(1) The general nature and purpose of the agency's personal data systems;

(2) The categories of personal and other data kept in the agency's personal data systems;

(3) The agency's procedures regarding the maintenance of personal data;

(4) The uses to be made of the personal data maintained by the agency.
(1976, P.A. 76–421, § 7, eff. July 1, 1977; 1977, P.A. 77–431, § 5, eff. June 14, 1977.)

1977 Amendment

1977, P.A. 77–431, § 5, provided that: "Sections 4–190, as amended by sections 1 and 2 of this act, 4–191, 4–192, 4–193, as amended by section 3 of this act, 4–194, as amended by section 4 of this act, 4–195 and 4–197 shall take effect January 1, 1978, and section 4–196 shall take effect from the passage of this act."

§ 4–197. Action against agency for violation of chapter

Any agency which violates any provision of this chapter shall be subject to an action by any aggrieved person for injunction, declaratory judgment, mandamus or a civil action for damages. Such action may be brought in the superior court for the judicial district of Hartford-New Britain, or for the judicial district in which the person resides. Actions for injunction, declaratory judgment or mandamus under this section may be prosecuted by any aggrieved person or by the attorney general in the name of the state upon his own complaint or upon the complaint of any individual. Any aggrieved person who prevails in an action under this section shall be entitled to recover court costs and reasonable attorney's fees. An action under this section shall be privileged with respect to assignment for trial.
(1976, P.A. 76–421, § 8, eff. July 1, 1977; 1977, P.A. 77–431, § 5, eff. June 14, 1977; 1978, P.A. 78–280, § 6, eff. July 1, 1978.)

1977 Amendment

1977, P.A. 77–431, § 5, provided that: "Sections 4–190, as amended by sections 1 and 2 of this act, 4–191, 4–192, 4–193, as amended by section 3 of this act, 4–194, as amended by section 4 of this act, 4–195 and 4–197 shall take effect January 1, 1978, and section 4–196 shall take effect from the passage of this act."

1978 Amendment

1978, P.A. 78–280, § 6, eff. July 1, 1978, provided for change of terms from "Hartford county" or "county of Hartford" to "judicial district of Hartford-New Britain"

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	11-8501 11-8607	X		X
2. Privacy and Security Council	11-8602			X
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	11-8511, 8518	X		
3.11 Authorizes to Govt. Non-Criminal Justice Agencies				
3.12 Authorizes to Private Sector				
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies	11-8511, 8518	X		
3.15 Prohibits to Private Sector	11-8511, 8518	X		
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	11-8511, 8518	X		
3.21 Authorizes to Govt. Non-Criminal Justice Agencies				
3.22 Authorizes to Private Sector				
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies	11-8511, 8518	X		
3.25 Prohibits to Private Sector	11-8511, 8518	X		
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	11-8511, 8518	X		
3.31 Authorizes to Govt. Non-Criminal Justice Agencies				
3.32 Authorizes to Private Sector				
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies	11-8511, 8518	X		
3.35 Prohibits to Private Sector	11-8511, 8518	X		
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	Reg. 1.4 11-8511(4)	X	X	
5. Right to Challenge	Reg. 1.5		X	
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information				
8. Purging Conviction Information				

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information				
11. Removal of Disqualifications				
12. Right to State Non-Existence of Record				
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	11-8503, 8504, 8505, 8506	X		
14.2 Auditing Requirements	11-8606			X
14.3 Other Accuracy/Completeness Requirements				
15. Dedication				
16. Civil Remedies	11-8520 11-8521 29-10005	X X X		
17. Criminal Penalties	11-8520 11-8521	X X		
18. Public Records	29-6412			X
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security				
22.1 Physical (Building) Security	11-8604			X
22.2 Administrative Security	11-8605, 29-5940			X
22.3 Computer Security	11-8604			X
23. Transaction Logs	Reg. 1.5		X	
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)				
27. FOIA (Excluding CJI)	29-10002(d)(4)	X		
28. Central State Repository	11-8501 et. seq.	X		

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'CHAPTER 86. JUSTICE INFORMATION SYSTEM

§8601. Definitions

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a)'Criminal history record information' shall mean information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records, to the extent that such information does not indicate involvement of the individual in the criminal justice system. Nor shall the term include information contained in:

(1) posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;

(2) original records of entry such as police blotters maintained by criminal justice agencies which are compiled chronologically and required by law with long-standing custom to be made public, if such records are organized on a chronological basis;

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(3) court records of public judicial proceedings;

(4) published court or administrative opinions or public judicial, administrative or legislative proceedings;

(5) records of traffic offenses maintained by the Division of Motor Vehicles for the purpose of regulating the issuance, supervision, revocation, or renewal of driver's, pilot's or other operator's licenses;

(6) announcements of executive clemency.

(b) 'Criminal justice agency' shall mean:

(1) every court of this State and of every political subdivision thereof;

(2) a government agency or any sub-unit thereof which performs the administration of criminal justice pursuant to statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. Such agencies shall include, but not be limited to, the following:

(i) the Delaware State Police,

(ii) all law enforcement agencies and police departments of any political subdivision of this State,

(iii) the State Department of Justice,

(iv) the Office of the Solicitor of the City of Wilmington, and

(v) the Department of Correction.

(c) 'Dissemination' shall mean the transmission of criminal history record information, or the confirmation

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of the existence or nonexistence of such information. The term shall not include:

(1) internal use of information by an officer or employee of the agency which maintains such information;

(2) transmission of information to the State Bureau of Identification;

(3) transmission of information to another criminal justice agency in order to permit the initiation of subsequent criminal justice proceedings;

(4) transmission of information in response to inquiries from criminal justice agencies via authorized system terminals, which agencies provide and/or maintain the information through those terminals.

§8602. Justice Information System; Board of Managers

The Delaware Justice Information System Board of Managers, hereinafter referred to as the 'Board', is hereby established.

(a) The Board shall establish policy for the development, implementation, and operation of comprehensive data systems in support of the agencies and courts of the criminal justice system of the State of Delaware. Said data systems shall include, but not be limited to, criminal history record information with respect to individuals who are arrested, or against whom formal criminal charges are preferred within this State, or against whom proceedings relating to the adjudication of a juvenile as delinquent are instituted.

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(b) The Board shall be composed of fourteen members, eight of whom shall be voting members as follows:

(1) one member of the Delaware State Police, to be designated by the Superintendent of the Delaware State Police;

(2) one member of a county or municipal police department, to be designated by the Delaware Police Chiefs' Council;

(3) two members to be designated by the Commissioner of the Department of Correction, one of whom shall represent the Bureau of Adult Correction and one, the Bureau of Juvenile Correction;

(4) two members to be designated by the Chief Justice of the Supreme Court, one of whom shall represent the Family Court and one, all other courts of this State;

(5) one member-at-large to be designated by the Governor; and

(6) one member to be designated by the Attorney General.

(c) In addition, there shall be six non-voting members:

(1) two members of the General Assembly, one Senator to be designated by the President Pro Tempore of the Senate and one Representative to be designated by the Speaker of the House of Representatives;

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(2) one member of the Delaware State Bureau of Identification, to be designated by the Superintendent of the Delaware State Police;

(3) one member of the State Division of Central Data Processing, to be designated by the Director of that Division;

(4) one member of the Delaware Criminal Justice Planning Commission to be designated by the Director of that agency; and

(5) one member of the Office of Management, Budget and Planning, to be designated by the Director of that Office.

(d) Each Board member shall serve at the pleasure of, and for the term prescribed by, the officer or individual by whom such member was appointed. The Board shall be provided with adequate staff support by the agencies represented on the Board to assure that applicable provisions of this Chapter are effectively carried out, (not inconsistent with State law.

(e) The Board shall have the power and authority to:

(1) Designate an Executive Committee which may act between meetings of the Board, subject to confirmation of its decisions by a quorum of the Board, which Executive Committee shall consist of not less than (5) members of the Board and shall be chaired by the Board Chairman.

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(2) Employ, supervise and evaluate an Executive Director to implement and administer the provisions of this chapter.

(3) Approve the Executive Director's annual Budget request and other applications for funds from any sources.

(f) The Board shall implement and establish policy for providing management and administrative statistics and for coordinating technical assistance to serve the information needs of the agencies represented on the Board, planners, administrators, legislators, and the general public.

§8603. Compliance with Statute

The Board shall insure that the State Bureau of Identification and all other criminal justice agencies collecting, storing, or disseminating criminal history record information and other information concerning crimes and offenders comply with the provisions of this Chapter and Chapter 85 of this Title.

§8604. Security

(a) The Board shall provide for the security of criminal history record information and other information pertaining to crimes and offenders by insuring that the State Bureau of Identification and all other criminal justice agencies, and

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agencies providing computer support services to criminal justice agencies which collect, store or disseminate such information, comply with the following provisions:

(1) where computerized data processing is employed, effective and technologically adequate software and hardware designs shall be instituted to prevent unauthorized access to and/or unauthorized additions, changes, or deletions to such information;

(2) access to computer system facilities, systems operating environments, data file contents, whether while in use or stored in a media library, and system documentation shall be restricted to specifically authorized organizations and personnel;

(3) procedures shall be instituted to assure that the facilities of the State Bureau of Identification provide safe and secure storage of all records;

(4) procedures shall be instituted to assure that an individual agency authorized to access either computerized records or data maintained in manual files by the State Bureau of Identification is responsible for the physical security of criminal history record information under its control or in its custody and the protection of such information from unauthorized access, disclosure or dissemination;

(5) direct access to criminal history record information shall be available only to authorized officers or employees of a criminal justice agency and, as necessary,

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to other authorized personnel essential to the proper operation of the criminal history record information system;

(6) each employee working with or having access to criminal history record information shall be made familiar with the substance and intent of this Chapter and Chapter 85 of this Title, as well as rules and regulations promulgated by the Board.

§8605. Screening of Authorized Personnel

(a) No person shall be appointed, promoted, or transferred to any position with an agency which has or allows access to criminal history record information facilities, systems operating environments, or data file contents, whether while in use or stored in a media library, without a criminal history record check by the employing agency. No person shall be appointed, promoted, or transferred to such a position by an agency if promotion or transfer could endanger the security, privacy, or integrity of such information.

(b) The Board shall initiate or cause to be initiated administrative action leading to the transfer or removal of personnel authorized to have access to such information, where such personnel violated the provisions of Chapter 85 of this Title.

(c)The Board shall provide for the establishment of a plan for resolving employee grievances, complaints and appeals.

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§8606. Annual Audit

The Board shall assure that an annual audit is conducted of a representative sample of agencies accessing or maintaining data files as provided in this Chapter and Chapter 85 of this Title. This audit shall encompass both manual and computerized data systems, and shall be conducted at such time and according to procedures as the Board shall by regulation prescribe. A full report of the findings of each audit made pursuant to this subsection shall be communicated to the individual agency so audited and to the Board.

§8607. Rules and Regulations

The Board shall have the power and authority to promulgate rules and regulations to insure compliance with the provisions of this Chapter not inconsistent with Chapter 85 of this Title."

§8608. Duties of the Executive Director

Under the direction of the Board, the Director's duties shall include but not be limited to:

(a) The employment and supervision of required employees.

(b) The preparation and control of an annual budget.

(c) The preparation of an annual report on the justice system's computerization status for presentation to the

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Governor, the Chief Justice of the Supreme Court and the General Assembly, which shall be made available to the general public upon request.

(d) The preparation of policy and procedure for implementing the audit, security and other provisions of this section.

§8609. Evaluation of the Board of Managers Function

No later than three (3) years from the effective date of this act, the Board shall cause an evaluation of the performance of the Board and its staff to take place with recommendations to the Governor, Chief Justice and members of the General Assembly concerning continuation, termination or revision.

"§5940. Exceptions; Employees Having Access to Criminal History Record Information

(a) Nothing in this Chapter or in any Rule promulgated hereunder shall limit the authority of a criminal justice agency or of the Delaware Justice Information System Board of Managers under §8605, Title 11 of the Delaware Code to deny the appointment, promotion, or transfer of any person to any position which has or allows access to criminal history record information.

(b) The Delaware Justice Information System Board of Managers shall have authority under the Rules to initiate or cause to be initiated administrative action leading

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to the transfer or removal of personnel of a criminal justice agency who are authorized to have or allow access to criminal history record information, where such personnel violate the provisions of Chapter 85, Title 11 of the Delaware Code.

(c) Any person who is otherwise qualified for a position under this Chapter who is denied appointment, promotion, or transfer to such position or who is transferred or removed from such position under the provisions of §8605, Title 11 of the Delaware Code, shall be given a written statement of the reason or reasons therefor by the agency responsible for such action, and the agency shall promptly give written notice of its action to the Commission."

Section 3. The sum of $57,000 is hereby appropriated to carry out the provisions of this Act. This sum appropriated shall be considered a supplemental appropriation and shall be paid by the State Treasurer from funds of the General Fund not otherwise appropriated. Funds hereby appropriated and remaining unexpended or unencumbered on June 30, 1981 shall revert to the General Fund of the State of Delaware.

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§ 6411. Organization regulations; rules of procedure.

For the benefit of the public, each agency shall adopt the following regulations:

(1) A general description of its organization, its methods of operations and the manner, including addresses and telephone numbers, whereby the public may obtain information and otherwise deal with the agency; and

(2) A statement of the nature and requirements of all rules of practice and procedure used by the agency to exercise its statutory authority in compliance with this chapter. (60 Del. Laws, c. 585, § 1.)

§ 6412. Public information.

(a) Each agency shall make available promptly to the public upon request, for inspection, originals or legible copies of the following:

(1) Its regulations, orders, decisions, opinions and licenses;

(2) Any documents, papers and other materials considered by the agency in taking agency action; or

(3) Any records of the agency reasonably specified by the requesting person.

(b) When making its documents and other materials available to the public, the agency may:

(1) Take reasonable precautions to preserve the integrity and security of such documents or materials;

(2) Make available only at reasonable, specified intervals documents and materials being actively used by the agency;

(3) Limit the availability of information to its regular business hours and place of business;

(4) Decline to make available documents and other materials which:

a. Relate solely to the agency's internal procedural and personnel practices;

b. Pertain to ongoing enforcement investigations which have not yet resulted in agency action;

c. Are specifically exempted from disclosure by law; or

d. Are confidential or privileged for the same or similar reasons as the Court would hold its records confidential or privileged;

(5) Make a reasonable charge for the cost of reproducing or copying such documents or materials.

(c) The Court shall have jurisdiction of all actions to compel an agency to produce or disclose any documents, materials or information and the agency shall have the burden of sustaining its refusal to produce or disclose as requested. (60 Del. Laws, c. 585, § 1.)

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority				
2. Privacy and Security Council				
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	Duncan Ord. Sect. 2			X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	Duncan Ord. Sect. 3,4,5			X
3.12 Authorizes to Private Sector	Duncan Ord. Sect. 3,4,5			X
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	Duncan Ord. Sect. 2			X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies				
3.22 Authorizes to Private Sector				
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies	Duncan Ord. Sect. 3			X
3.25 Prohibits to Private Sector	Duncan Ord. Sect. 3			X
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	Duncan Ord. Sect. 2			X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies				
3.32 Authorizes to Private Sector				
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies	Duncan Ord. Sect. 3			X
3.35 Prohibits to Private Sector	Duncan Ord. Sect. 3			X
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	Duncan Ord. Sect. 3,4,5			X
5. Right to Challenge				
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information				
8. Purging Conviction Information				

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information				
11. Removal of Disqualifications				
12. Right to State Non-Existence of Record				
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	4-134a(b)	X		
14.2 Auditing Requirements				
14.3 Other Accuracy/Completeness Requirements				
15. Dedication				
16. Civil Remedies	1-1527			X
17. Criminal Penalties				
18. Public Records	1-1521			X
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security				
22.1 Physical (Building) Security				
22.2 Administrative Security				
22.3 Computer Security				
23. Transaction Logs				
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)	1-1521			X
27. FOIA (Excluding CJI)				
28. Central State Repository	4-134a	X		

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Duncan Ordinance

1. That no record, copy, extract, compilation or statement concerning any record relating to any juvenile offender or relating to any juvenile with respect to whom the Metropolitan Police Department retains any record or writing, shall be released to any person for any purpose except as may be provided under D.C. Code, Section 11–1586; provided, that the release of such information to members of the Metropolitan Police Department, and the dissemination of such information by the Metropolitan Police Department to the police departments of other jurisdictions wherein juveniles apprehended in the District of Columbia may reside, shall be authorized; provided further, that the release of such information to individuals to whom the information may relate or to the parents or guardians or duly authorized attorneys of such individuals, shall be authorized in those cases in which applicants therefor present documents of apparent authenticity indicating need for such information for reasons other than employment. The term "employment", in the context of this paragraph, shall not include military service.
2. That unexpurgated adult arrest records, as provided under D.C. Code, Section 4–134a,[46] shall be released to law enforcement agents upon request, without cost and without the authorization of the persons to whom such records relate and without any other prerequisite, provided that such law enforcement agents represent that such records are to be used for law enforcement purposes. The term "law enforcement agent" is limited in this context to persons having cognizance of criminal investigations or of criminal proceedings directly involving the individuals to whom the requested records relate. The term includes judges, prosecutors, defense attorneys (with respect to the records of their client defendants), police officers, Federal agents having the power of arrest, clerks of courts, penal and probation officers and the like. It does not include private detectives and investigators; personnel investigators, directors and officers; private security agents or others who do not ordinarily participate in the process involving the detection, apprehension, trial or punishment of criminal offenders.
3. That, subject to the foregoing, adult arrest records, as provided under D.C. Code, Section 4–134a, shall be released in a form which reveals only entries relating to offenses which have resulted in convictions or forfeitures of collateral.
4. That, subject to the foregoing, adult arrest records, as provided under D.C. Code, Section 4–134a, shall be released in a form which reveals only entries relating to offenses committed not more than 10 years prior to the date upon which such records are requested; except that, where an offender has been imprisoned during all or part of

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the preceding 10-year period, the record shall include entries relating to such earlier conviction.

5. That, subject to the foregoing, copies or extracts of adult arrest records, as provided under D.C. Code, Section 4–134a, or statements of the non-existence of such records shall be released to applicants therefor upon the payment of fees to be based upon the cost of editing and producing such copies, extracts or statements; provided, that applicants who are not the persons to whom such records may relate must, in addition to the required fees, present releases in appropriate form executed by the persons to whom the records may relate; provided further, that no fee shall be required with respect to any record solicited by any agent of the Federal or District of Columbia Government for a governmental purpose.

6. That Article 47 of the Police Regulations of the District of Columbia be amended to provide that it shall be an offense punishable by a fine not to exceed $50.00, for any person to require as a condition of employment the production of any arrest record or copy, extract or statement thereof at the expense of any employee or applicant for employment to whom such record may relate.[47]

District of Columbia Code

Title 1

SUBCHAPTER II.—FREEDOM OF INFORMATION [NEW]

§ 1–1521. Public policy

Generally the public policy of the District of Columbia is that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To that end, provisions of this act shall be construed with the view toward expansion of public access and the minimization of costs and time delays to persons requesting information.
March 29, 1977, D.C.Law, No. 1–96, § 2(201), 23 D.C.Reg. No. 24, p. 3744.

§ 1–1522. Right of access to public records—Allowable costs—Time limits

(a) Any person has a right to inspect, and at his or her discretion, to copy any public record of the Mayor or an agency, except as otherwise expressly provided by section 1–1524, in accordance with reasonable rules that shall be issued by the Mayor or an agency after notice and comment, concerning the time and place of access.

(b) The Mayor or an agency may establish and collect fees not to exceed the actual cost of searching for or making copies of records, but in no instance shall the total fee for searching exceed 10 dollars for each request. For purposes of this subsection "request" means a single demand for any number of documents made at one time to an individual agency. Documents may be furnished without charge or at a reduced charge where the Mayor or agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Notwithstanding the foregoing, fees shall not be charged for examination and review by the Mayor or an agency to determine if such documents are subject to disclosure.

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(c) The Mayor or an agency, upon request reasonably describing any public record, shall within 10 days (except Saturdays, Sundays, and legal public holidays) of the receipt of any such request either make the requested public record accessible or notify the person making such request of its determination not to make the requested public record or any part thereof accessible and the reasons therefor.

(d) In unusual circumstances, the time limit prescribed in subsection (c) of this section may be extended by written notice to the person making such request setting forth the reasons for extension and expected date for determination. Such extension shall not exceed 10 days (except Saturdays, Sundays and legal public holidays). For purposes of this subsection, and only to the extent necessary for processing of the particular request, 'unusual circumstances' are limited to:

(1) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(2) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(e) Any failure on the part of the Mayor or an agency to comply with a request under subsection (a) of this section within the time provisions of subsections (c) and (d) of this section shall be deemed a denial of the request, and the person making such request shall be deemed to have exhausted his administrative remedies with respect to such request, unless such person chooses to petition the Mayor pursuant to section 1-1527 to review the deemed denial of the request.

March 29, 1777, D.C.Law, No. 1-96, § 2(202), 23 D.C.Reg. No. 24, p. 3744.

§ 1-1523. Letters of denial

(a) Denial by the Mayor or an agency of a request for any public record shall contain at least the following:

(1) the specific reasons for the denial, including citations to the particular exemption(s) under section 1-1524 relied on as authority for the denial;

(2) the name(s) of the public official(s) or employee(s) responsible for the decision to deny the request; and

(3) notification to the requester of any administrative or judicial right to appeal under section 1-1527.

(b) The Mayor and each agency of the District of Columbia shall maintain a file of all letters of denial of requests for public records. This file shall be made available to any person on request for purposes of inspection and/or copying.

March 29, 1977, D.C.Law, No. 1-96, § 2(203), 23 D.C.Reg. No. 24, p. 3744.

§ 1-1524. Exemptions

(a) The following matters may be exempt from disclosure under the provisions of this subchapter:

(1) Trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained;

(2) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

(3) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would—

(A) interfere with enforcement proceedings,

(B) deprive a person of a right to a fair trial or an impartial adjudication,

(C) constitute an unwarranted invasion of personal privacy,

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(D) disclose the identity of a confidential source and, in the case of a record compiled by a law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(E) disclose investigative techniques and procedures not generally known outside the government,

(F) endanger the life or physical safety of law enforcement personnel;

(4) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(5) Test questions and answers to be used in future license, employment, or academic examinations, but not previously administered examinations or answers to questions thereon;

(6) Information specifically exempted from disclosure by statute (other than this section), provided that such statute—

(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(B) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and

(7) Information specifically authorized by Federal law under criteria established by a Presidential Executive order to be kept secret in the interest of national defense or foreign policy which is in fact properly classified pursuant to such Executive order.

(b) Any reasonably segregable portion of a public record shall be provided to any person requesting such record after deletion of those portions which may be withheld from disclosure under subsection (a) of this section.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from the Council of the District of Columbia. This section shall not operate to permit non-disclosure of information of which disclosure is authorized or mandated by other law.

March 29, 1977, D.C.Law, No. 1-96, § 2(204), 23 D.C.Reg. No. 24, p. 3744.

§ 1-1525. Recording of final votes

Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in each proceeding of that agency.

March 29, 1977, D.C.Law, No. 1-96, § 2(205), 23 D.C.Reg. No. 24, p. 3744.

§ 1-1526. Information which must be made public

Without limiting the meaning of other sections of this subchapter, the following categories of information are specifically made public information:

(a) the names, salaries, title, and dates of employment of all employees and officers of the Mayor and an agency;

(b) administrative staff manuals and instructions to staff that affect a member of the public;

(c) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(d) those statements of policy and interpretations of policy, acts, and rules which have been adopted by the Mayor or an agency;

(e) correspondence and materials referred to therein, by and with the Mayor or an agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or states an opinion upon, or is asked to determine or state an opinion upon, the rights of the District, the public, or any private party;

(f) information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies; and

(g) the minutes of all proceedings of all agencies.

March 29, 1977, D.C.Law, No. 1-96, § 2(206), 23 D.C.Reg. No. 24, p. 3744.

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§ 1–1527. Administrative appeals and enforcement

(a) Any person denied the right to inspect a public record of a public body may petition the Mayor to review the public record to determine whether it may be withheld from public inspection. Such determination shall be made in writing with a statement of reasons therefor in writing within 10 days (excluding Saturdays, Sundays, and legal holidays) of the submission of the petition.

(1) If the Mayor denies the petition or does not make a determination within the time limits provided in this subsection, or if a person is deemed to have exhausted his or her administrative remedies pursuant to subsection (e) of section 1–1522, the person seeking disclosure may institute proceedings for injunctive or declaratory relief in the Superior Court for the District of Columbia.

(2) If the Mayor decides that the public record may not be withheld, he shall order the public body to disclose the record immediately. If the public body continues to withhold the record, the person seeking disclosure may bring suit in the Superior Court for the District of Columbia to enjoin the public body from withholding the record and to compel the production of the requested record.

(b) In any suit filed under subsection (a) of this section, the Superior Court for the District of Columbia may enjoin the public body from withholding records and order the production of any records improperly withheld from the person seeking disclosure. The burden is on the Mayor or the agency to sustain its action. In such cases the court shall determine the matter *de novo*, and may examine the contents of such records *in camera* to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in section 1–1524.

(c) If a person seeking the right to inspect or to receive a copy of a public record prevails in whole or in part in such suit, he or she may be awarded reasonable attorney fees and other costs of litigation.

March 29, 1977, D.C.Law, No. 1-96, § 2(207), 23 D.C.Reg. No. 24, p. 3744.

§ 1–1528. Oversight

On or before the 30th day of June of each calendar year, the Mayor shall compile and submit to the Council of the District of Columbia a report covering the public-record-disclosure activities of each agency and of Executive Branch as a whole during the preceding calendar year. The report shall include:

(1) The number of determinations made by each agency not to comply with requests for records made to such agency under this subchapter and the reasons for each such determination;

(2) The number of appeals made by persons under Section 1–1527(a), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) The names and titles or positions of each person responsible for the denial of records requested under this subchapter, and the number of instances of participation for each such person;

(4) A copy of the fee schedule and the total amount of fees collected by each agency for making records available under this subchapter;

(5) Such other information as indicates efforts to administer fully this subchapter; and

(6) For the prior calendar year, a listing of the total number of cases arising under this subchapter, the total number of cases in which a request was denied in whole or in part, the total number of times in which each exemption provided under section 1–1524 was cited as a reason for denial of a request, and the total amount of fees collected under section 1–1522(b). Such report shall also include a description of the efforts undertaken by the Mayor to encourage agency compliance with this title.

March 29, 1977, D.C.Law, No. 1-96, § 2(208), 23 D.C.Reg. No. 24, p. 3744.

§ 1–1529. Definition

For the purposes of this subchapter, the terms "Mayor", "Council", "District", "agency", "rule", "rulemaking", "person", "party", "order", "relief", "proceeding", "public record", and "adjudication" shall have the meaning as provided in section 1–1502.

March 29, 1977, D.C.Law, No. 1-96, § 2(209), 23 D.C.Reg. No. 24, p. 3744.

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	943.05(2)			X
2. Privacy and Security Council	943.06-08			X
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	943.053			X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	943.053			X
3.12 Authorizes to Private Sector	943.053			X
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	943.053			X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	943.053			X
3.22 Authorizes to Private Sector	943.053			X
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	943.053			X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	943.053			X
3.32 Authorizes to Private Sector	943.053			X
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	Reg. 11C-8 943.056		X	X
5. Right to Challenge	943.056 Reg. 11C-8		X	X
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information	943.058			X
8. Purging Conviction Information	943.058			X

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information	943.058			X
10. Sealing Conviction Information	943.058			X
11. Removal of Disqualifications	893.14 943.058	X		X
12. Right to State Non-Existence of Record	893.14 943.058	X		X
13. Research Access	943.057			X
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	943.052			X
14.2 Auditing Requirements	943.055			X
14.3 Other Accuracy/Completeness Requirements	Reg. 11C-4 943.056		X	X
15. Dedication				
16. Civil Remedies	119.02			X
17. Criminal Penalties	119.10 119.02			X X
18. Public Records	119.01			X
19. Separation of Files				
20. Regulation of Intelligence Collection	943.08			X
21. Regulation of Intelligence Dissemination	943.08			X
22. Security	943.08			X
22.1 Physical (Building) Security	943.08			X
22.2 Administrative Security	943.08			X
22.3 Computer Security	943.08			X
23. Transaction Logs	943.055			X
24. Training Employees	943.08			X
25. Listing of Information Systems				
26. FOIA (Including CJI)	119.01			X
27. FOIA (Excluding CJI)				
28. Central State Repository	943.051			X

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Florida Statutes Annotated

CHAPTER 943. DEPARTMENT OF LAW ENFORCEMENT [NEW]

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943.03 Department of Law Enforcement.
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943.05 Division of Criminal Justice Information Systems; duties; crime reports.
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943.15 Reimbursement of employing agency by the department.
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943.27, 943.28 Repealed.
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943.31 Legislative intent.
943.32 Statewide criminal analysis laboratory system.
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943.461 Definitions.
943.462 Prohibited activities and defense.
943.463 Criminal penalties and alternative fine.
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943.01 Short title

This chapter shall be known as the "Department of Law Enforcement Act of 1974."

Laws 1974, c. 74-386, § 1, eff. Aug. 1, 1974. Amended by Laws 1978, c. 78-347, § 2, eff. Oct. 1, 1978.

Laws 1978, c. 78-347, deleted "criminal" preceding "law enforcement".

Library references
States ⇐45.
C.J.S. States §§ 79, 80, 82, 136.

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1. In general

The governor's power to see that laws are faithfully executed, which is essentially what the Department of Criminal Law Enforcement Act of 1974 is designed to achieve, derives from Const. Art. 4, § 1, pertaining to powers and duties of governor. Thompson v. State, 342 So.2d 52 (1976).

In the area of law enforcement, the resources of the State must be marshalled and focused in the manner deemed most efficacious at the time; the burden of this task falls on the executive branch of government, although power to determine what is or is not criminal behavior is peculiarly within the province of the legislature. Id.

2. Purpose

The Department of Criminal Law Enforcement Act of 1974 was enacted by the legislature to assist local governments in combating crime and to provide the means for statewide enforcement of state criminal laws. Thompson v. State, 342 So.2d 52 (1976).

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943.02 Definitions

For the purpose of this chapter:

(1) "Department" means the Department of Law Enforcement.

(2) "Executive director" means the executive director of the Department of Law Enforcement.

Laws 1974, c. 74-386, § 2, eff. Aug. 1, 1974. Amended by Laws 1978, c. 78-347, § 2, eff. Oct. 1, 1978.

Laws 1978, c. 78-347, deleted "criminal" preceding "law enforcement" in the department name.

943.03 Department of Law Enforcement

(1) The executive director shall have served at least five (5) years as a police executive or possess training and experience in police affairs or public administration and shall be a bona fide resident of the state. It shall be the duty of the executive director to supervise, direct, coordinate, and administer all activities of the department and to exercise the duties prescribed for the State Law Enforcement Coordinator under Part VII of Chapter 23, known as the Florida Mutual Aid Act.

(2) The department shall employ such administrative, clerical, technical, and professional personnel, including division directors as hereinafter provided, as may be required, at salaries to be established by the department, to perform such duties as the department may prescribe.

(3) Pursuant to chapter 120, the department shall adopt the rules and regulations deemed necessary to carry out its duties and responsibilities under this chapter.

(4) The department may make and enter into all contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal agencies as the department may determine are necessary, expedient, or incidental to the performance of its duties or the execution of its power under this chapter. However, nothing in this chapter shall authorize the employment of private investigative personnel by contract to conduct investigations.

(5)(a) The department shall be governed by all laws regulating the purchase of supplies and equipment as other state agencies and may enter into contracts with other state agencies to make photographs and photostats, to transmit information by teletype, and to perform all those services consonant with the purpose of this chapter.

(b) It may use without charge the technical personnel and equipment of any state agency.

(6) The powers herein enumerated, or set forth in other parts of this chapter, shall be deemed an exercise of the state police power for the protection of the welfare, health, peace, safety, and morals of the people and shall be liberally construed.

(7) The Department of Legal Affairs shall be the legal advisor to and shall represent the department.

(8) The department may accept for any of its purposes and functions under this chapter any and all donations of property, real, personal, or mixed, and grants of money, from any governmental unit or public agency or from any institution, person, firm, or corporation. Such moneys shall be deposited, disbursed, and administered in a trust fund as provided by law.

(9) The department shall make an annual report of its activities to the governor and to the legislature and include in such report its recommendations for additional legislation.

(10) The department shall establish headquarters in Tallahassee. The Department of General Services shall furnish the department with proper and adequate housing for its operation.

Laws 1974, c. 74-386, § 3, eff. Aug. 1, 1974.

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943.04 Division of Criminal Investigation; creation; investigative and related authority

(1) There is created a Division of Criminal Investigation within the Department of Law Enforcement. The division shall be supervised by a director who shall be employed by the department upon the recommendation of the executive director. It shall be the duty of the director to supervise, direct, coordinate, and administer all activities of the division.

(2)(a) Under appropriate rules and regulations adopted by the department, or upon written order of the Governor or by direction of the Legislature acting by a concurrent resolution, and at the direction of the executive director, the Division of Criminal Investigation may investigate violations of any of the criminal laws of the state, and shall have authority to bear arms, make arrests and apply for, serve and execute search warrants, arrest warrants, capias and other process of the court.

(b) Investigations may also be conducted in connection with the faithful execution and effective enforcement of the laws of the state with reference to organized crime, vice, racketeering, rioting, inciting to riot and insurrection, and, upon specific direction by the governor in writing to the executive director, the misconduct, in connection with their official duties, of public officials and employees and of officials and members of public corporations and authorities subject to suspension or removal by the governor.

(c) All investigators employed by the department shall be considered peace officers for all purposes. The executive director shall have the authority to designate the person occupying any appropriate position within the department as a peace officer, if such person is qualified under the department's personnel regulations relating to agents, and all persons thus employed by the department shall be considered peace officers for all purposes and shall be entitled to the privileges, protection, and benefits of ss. 112.19, 121.051, 122.34, and 870.05.

(3) Whenever it shall appear to the department that there is cause for the prosecution of a crime, the department shall refer the evidence of such crime to the officials authorized to conduct the prosecution.

Laws 1974, c. 74-386, § 4, eff. Aug. 1, 1974. Amended by Laws 1976, c. 76-247, § 5, eff. July 1, 1976; Laws 1977, c. 77-127, § 1, eff. June 7, 1977; Laws 1977, c. 77-174, § 1, eff. Aug. 2, 1977; Laws 1978, c. 78-347, § 2, eff. Oct. 1, 1978; Laws 1979, c. 79-8, § 34, eff. Aug. 5, 1979.

Laws 1976, c. 76-247, added subsec. (4).

Laws 1977, c. 77-127, repealed subsec. (4) which provided for personal security for state officers and members of the legislature upon request of certain officers.

Laws 1977, c. 77-174, a reviser's bill, amended subsec. (2)(c) of this section to reflect language editorially inserted in the interest of clarity by the division of statutory revision and indexing.

Laws 1978, c. 78-347, changed the division name from "law enforcement" to "criminal investigation", and deleted "criminal" preceding "law enforcement" in the department name.

Laws 1979, c. 79-8, a reviser's bill, substituted references to the "department of criminal law enforcement" with "department of law enforcement" and "division of law enforcement" with "division of criminal investigation" to conform with agency name charges made by Laws 1978, c. 78-347.

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1. In general

This section requiring division of law enforcement to exercise its statutory powers, inter alia, "at the direction of the executive director," does not require specific approval of every action taken by an agent, but exists to insure that supervisory responsibility remains in the executive director as the head of the agency. Thompson v. State, 342 So.2d 52 (1976).

2. Search

Where record before Supreme Court contained no testimony bearing on scope of search conducted by Department of Criminal Law Enforcement agents and no listed stipulation of facts by counsel and was thus inadequate for consideration of defendant's contention that agents conducted search beyond scope of warrant, and where clerk of Supreme Court brought unsatisfactory status of record to attention of defense counsel who elected to stand upon record as filed, trial court's order denying motion to suppress evidence seized by agents was affirmed, as no error had been made to appear. Thompson v. State, 342 So.2d 52 (1976).

Where governor acted within his authority under Department of Criminal Law Enforcement Act of 1974 in ordering investigation of all illegal conduct of state officials and employees, and where Department agents complied with re-

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quirements of chapter pertaining to search warrants, Department was validly ordered to exercise its investigatory powers and had power to obtain and execute search warrant. Id.

3. Rules

Rules need not be promulgated before the adoption by the legislature of a concurrent resolution initiating action by the Department of Criminal Law Enforcement, since the legislature is not subject to the Administrative Procedure Act. Thompson v. State, 342 So.2d 52 (1976).

4. Executive orders

Portion of governor's executive order authorizing Department of Criminal Law Enforcement to investigate "misconduct" of public officials would be construed to mean those acts of misconduct which violated state criminal laws, since governor had no power under Department of Criminal Law Enforcement Act of 1974 to direct investigation of lesser forms of misconduct. Thompson v. State, 342 So.2d 52 (1976).

Governor has no power under the Department of Criminal Law Enforcement Act of 1974 to direct an investigation of lesser forms of misconduct than violation of state criminal laws. Id.

This section authorizing governor to order investigation by Department of Criminal Law Enforcement by written order did not authorize an unbridled exercise of executive discretion to investigate matters outside sphere of duty already imposed by constitutional provision pertaining to powers and duties of governor, despite contention that statute constituted a delegation of legislative power to executive branch of government in violation of constitutional provision pertaining to separation of powers. Id.

943.045 Definitions

The following words and phrases as used in ss. 943.045–943.08 shall have the following meanings:

(1) "Criminal justice information system" means a system, including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal justice information.

(2) "Administration of criminal justice" means performing functions of detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders by governmental agencies. The administration of criminal justice includes criminal identification activities and the collection, processing, storage, and dissemination of criminal justice information by governmental agencies.

(3) "Criminal justice information" means information on individuals collected or disseminated as a result of arrest, detention, or the initiation of a criminal proceeding by criminal justice agencies, including arrest record information, correctional and release information, criminal history record information, conviction record information, identification record information, and wanted persons record information. The term shall not include statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable. The term shall not include criminal intelligence information or criminal investigative information.

(4) "Criminal history information" means information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as fingerprint records, if the information does not indicate involvement of the person in the criminal justice system.

(5) "Criminal intelligence information" means information collected by a criminal justice agency with respect to an identifiable person or group in an effort to anticipate, prevent, or monitor possible criminal activity.

(6) "Criminal investigative information" means information about an identifiable person or group, compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific criminal act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators, informants, or any type of surveillance.

(7) "Record" means any and all documents, writings, computer memory, and microfilm, and any other form in which facts are memorialized, irrespective of whether such record is an official record, public record, or admissible record or is merely a copy thereof.

(8) "Comparable ordinance violation" means a violation of an ordinance having all the essential elements of a statutory misdemeanor or felony.

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(9) "Disposition" means details relating to the termination of an individual criminal defendant's relationship with a criminal justice agency, including information disclosing that the law enforcement agency has elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, that a court has dealt with the individual, or that the individual has been incarcerated, paroled, pardoned, released, or granted clemency. Dispositions include, but are not limited to, acquittals, dismissals, pleas, convictions, adjudications, youthful offender determinations, determinations of mental capacity, placements in intervention programs, pardons, probations, paroles, and releases from correctional institutions.

(10) "Criminal justice agency" means:

(a) A court; or

(b) A governmental agency or subunit thereof which performs the administration of criminal justice pursuant to a statute or rule of court and which allocates a substantial part of its annual budget to the administration of criminal justice.

(11) "Dissemination" means the transmission of information, whether orally or in writing.

(12) "Research or statistical project" means any program, project, or component the purpose of which is to develop, measure, evaluate, or otherwise advance the state of knowledge in a particular area. The term does not include intelligence, investigative, or other information-gathering activities in which information is obtained for purposes directly related to enforcement of the criminal laws.

(13) "Expunction of a record" means the act of physical destruction or obliteration of a record or portion of a record. The process of expunction extends to all records, the continued existence of which would be contrary to the purpose of the expunction.

(14) "Sealing of a record" means the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein.

(15) "Adjudicated guilty" means that a person has been found guilty and that the court has not withheld an adjudication of guilt.

(16) "Criminal intelligence information system" means a system, including the equipment, facilities, procedures, agreement, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal intelligence information.

(17) "Criminal investigative information system" means a system, including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal investigative information.

Formerly 943.07. Renumbered as 943.045 and amended by Laws 1980, c. 80-409, § 1, eff. Oct. 1, 1980.

Repeal

Laws 1978, c. 78-323, § 4, the "Sundown Act", providing for the repeal of boards, committees, and councils which have held official meetings since January 1, 1975, provides for the repeal of this section, relating to the criminal justice information systems council, on October 1, 1981. For a complete listing of all entities affected by Laws 1978, c. 78-323, see § 11.611 and notes thereunder.

Laws 1980, c. 80-409, § 1, renumbered this section from 943.07 and rewrote the provisions thereof.

943.05 Division of Criminal Justice Information Systems; duties; crime reports

(1) There is created a Division of Criminal Justice Information Systems within the Department of Law Enforcement. The division shall be supervised by a director who shall be employed upon the recommendation of the executive director.

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(2) The division shall:

(a) Establish a system of fingerprint analysis and identification.

(b) Establish a system of intrastate communication of vital statistics and information relating to crimes, criminals, and criminal activity. The division shall cooperate with state, county, municipal, and federal agencies in the establishment of such a system.

(c) Establish a system of uniform crime reports and statistical analysis.

1. All state, county, and municipal law enforcement agencies shall submit to the department uniform crime reports setting forth their activities in connection with law enforcement.

2. It shall be the duty of the division, under the supervision of the executive director, to adopt and promulgate rules prescribing the form, general content, and time and manner of submission of such uniform crime reports required pursuant to subparagraph 1. The rules so adopted and promulgated shall be filed with the Department of State pursuant to chapter 120 and shall have the force and effect of law. Willful or repeated failure by any state, county, or municipal law enforcement official to submit the uniform crime reports required by subparagraph 1. shall constitute neglect of duty in public office.

3. The division shall correlate the reports submitted to it pursuant to subparagraph 1. and shall compile and submit to the Governor and the Legislature semiannual reports based on such reports. A copy of these reports shall be furnished to all prosecuting authorities and law enforcement agencies.

(d) Exercise management control over all criminal justice information systems operated or maintained by the Department of Law Enforcement.

(e) Develop such rules in cooperation with the Criminal Justice Information Systems Council as are necessary to implement the provisions of ss. 943.045–943.058 and federal laws and regulations which pertain to criminal justice information systems in this state.

(f) When necessary, participate in interstate and federal criminal justice information systems and cooperate with agencies within the state, including the courts, in the operation of criminal justice information systems.

Laws 1974, c. 74–386, § 5, eff. Aug. 1, 1974. Amended by Laws 1977, c. 77–174, § 1, eff. Aug. 2, 1977; Laws 1978, c. 78–347, § 2, eff. Oct. 1, 1978; Laws 1980, c. 80–409, § 2, eff. Oct. 1. 1980.

Laws 1977, c. 77–174, a reviser's bill, amended subsec. (1) of this section to reflect language editorially inserted in the interest of clarity by the division of statutory revision and indexing.

Laws 1978, c. 78–347, deleted "criminal" preceding "law enforcement" in the department name.

Laws 1980, c. 80–409, § 2, deleted "and regulations" following "rules" in subsec. (2)(c)2, and added para. (d) to (f) of subsec. (2).

943.051 Criminal justice information; collection and storage; fingerprinting

(1) The Division of Criminal Justice Information Systems, acting as the state's central criminal justice information repository, shall collect, process, and store criminal justice information and records necessary to the operation of the criminal justice information system of the Department of Law Enforcement.

(2) When practicable, the division may develop systems which inform one criminal justice agency of the general nature of criminal justice information held or maintained by other criminal justice agencies.

(3) The division shall collect, process, maintain, and disseminate information and records with due regard to the privacy interests of individuals and shall strive to maintain or disseminate only accurate and complete records.

(4) Each person charged with or convicted of a felony, misdemeanor, or violation of a comparable ordinance by a state, county, municipal, or other law enforcement agency shall be fingerprinted, and such fingerprints shall be submitted to the Department of Law Enforcement. Exceptions to this requirement for specified misdemeanors or comparable ordinance violations may be made by the department by rule.

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(5) Fingerprints shall be used as the basis for criminal history records.
Added by Laws 1980, c. 80-409, § 3, eff. Oct. 1, 1980.

943.052 Disposition reporting

Each criminal justice agency shall monitor its records and submit disposition reports to the Division of Criminal Justice Information Systems in such format and detail and at such times as the Department of Law Enforcement may prescribe by rule. No rule or exception thereto which would affect the courts or court clerks shall be noticed as a proposed rule without the approval of the Supreme Court or its designee.
Added by Laws 1980, c. 80-409, § 4, eff. Oct. 1, 1980.

943.0525 Criminal justice information systems; use by state and local agencies

As a condition of participating in any criminal justice information system established by the division or of receiving criminal justice information, state and local agencies shall be required to execute appropriate user agreements and to comply with applicable federal laws and regulations, this chapter, and [1] rules of the Department of Law Enforcement adopted thereunder. Failure to comply with such laws or rules shall constitute grounds for immediate termination of services or withholding of criminal justice information.
Laws 1980, c. 80-409, § 2, eff. Oct. 1, 1980.

[1] The word "and" was substituted by the division of statutory revision for the word "or."

943.053 Dissemination of criminal justice information; fees

(1) The Department of Law Enforcement shall disseminate criminal justice information only in accordance with federal and state laws, regulations, and rules.

(2) Criminal justice information derived from federal criminal justice information systems or criminal justice information systems of other states shall not be disseminated in a manner inconsistent with the laws, regulations, or rules of the originating agency.

(3) Criminal history information compiled by the Division of Criminal Justice Information Systems from intrastate sources shall be available on a priority basis to criminal justice agencies for criminal justice purposes free of charge and, otherwise, to governmental agencies not qualified as criminal justice agencies on an approximate-cost basis. After providing the division with all known identifying information, persons in the private sector may be provided criminal history information upon tender of fees as established by rule of the Department of Law Enforcement. Such fees shall approximate the actual cost of producing the record information. Fees may be waived by the Executive Director of the Department of Law Enforcement for good cause shown.

(4) Criminal justice information provided by the Department of Law Enforcement shall be used only for the purpose stated in the request.
Added by Laws 1980, c. 80-409, § 5, eff. Oct. 1, 1980.

943.054 Exchange of federal criminal history records and information

(1) Criminal history information derived from any United States Department of Justice criminal justice information system is available:

(a) To criminal justice agencies for criminal justice purposes.

(b) Pursuant to applicable federal laws and regulations for use in connection with licensing or local or state employment or for such other uses only as authorized by federal or state laws which have been approved by the United States Attorney General or his designee. When no active prosecution of the charge is known to be pending, arrest data more than 1 year old is not disseminated unless accompanied by information relating to the disposition of that arrest.

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(c) For issuance of press releases and publicity designed to effect the apprehension of wanted persons in connection with serious or significant offenses.

(2) The exchange of federal criminal history information is subject to cancellation if dissemination is made outside the receiving departments or related agencies.

(3) A criminal justice agency may refer to federal criminal history records and disclose to the public factual information concerning the status of an investigation; the apprehension, arrest, release, or prosecution of an individual; the adjudication of charges; or the correctional status of an individual when such disclosure is reasonably contemporaneous with the event to which the information relates.

Added by Laws 1980, c. 80-409, § 6, eff. Oct. 1, 1980.

943.055 Records and audit

(1) Criminal justice agencies disseminating criminal justice information derived from a Department of Law Enforcement criminal justice information system shall maintain a record of dissemination in accordance with rules promulgated by the Department of Law Enforcement.

(2) The Division of Criminal Justice Information Systems shall arrange for any audits of state and local criminal justice agencies necessary to assure compliance with federal laws and regulations, this chapter, and rules of the Department of Law Enforcement pertaining to the establishment, operation, security, and maintenance of criminal justice information systems.

Added by Laws 1980, c. 80-409, § 7, eff. Oct. 1, 1980.

943.056 Access to, review and challenge of, criminal history records

(1) When a person requests a copy of his own criminal history record not otherwise available as provided by s. 119.07, the Department of Law Enforcement shall provide such record for review upon verification, by fingerprints, of the identity of the requesting person. The providing of such record shall not require the payment of any fees, except those provided for by federal regulations.

(2) Criminal justice agencies subject to chapter 120 shall be subject to hearings regarding those portions of criminal history records for which the agency served as originator. When it is determined what the record should contain in order to be complete and accurate, the Division of Criminal Justice Information Systems shall be advised and shall conform state and federal records to the corrected criminal history record information.

(3) Criminal justice agencies not subject to chapter 120 shall be subject to administrative proceedings for challenges to criminal history record information in accordance with rules established by the Department of Law Enforcement.

(4) Upon request, an individual whose record has been corrected shall be given the names of all known noncriminal justice agencies to which the data has been given. The correcting agency shall notify all known criminal justice recipients of the corrected information, and those agencies shall modify their records to conform to the corrected record.

Added by Laws 1980, c. 80-409, §§ 8, 9, eff. Oct. 1, 1980.

943.057 Access to criminal justice information for research or statistical purposes

The Department of Law Enforcement may provide by rule for access to and dissemination and use of criminal justice information for research or statistical purposes. All requests for records or information in the criminal justice information systems of the department shall require the requesting individual or entity to enter into an appropriate privacy and security agreement which provides that the requesting individual or entity shall comply with all laws and rules governing the use of criminal justice information for research or statistical purposes. The department may charge a fee for the production of criminal justice information hereunder. Such fee shall approximate the

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actual cost of production. This section shall not be construed to require the release of confidential information or to require the department to accommodate requests which would disrupt ongoing operations beyond the extent required by s. 119.07.
Added by Laws 1980, c. 80-409, § 10, eff. Oct. 1, 1980.

943.0575 Public access to records

Nothing in this act shall be construed to restrict or condition public access to records as provided by s. 119.07.
Laws 1980, c. 80-409, § 16, eff. Oct. 1, 1980.

943.058 Criminal history record expunction or sealing

(1) Notwithstanding statutes dealing more generally with the preservation and destruction of public records, the Department of Law Enforcement, in consultation with the Department of State, may provide, by rule adopted pursuant to chapter 120, for the administrative expunction of any nonjudicial record of arrest made contrary to law or by mistake or when the record no longer serves a useful purpose.

(2) The courts of this state shall continue to have jurisdiction over their own procedures, including the keeping, sealing, expunction, or correction of judicial records containing criminal history information. The courts may order the sealing or expunction of any other criminal history record provided:

(a) The person who is the subject of the record has never previously been adjudicated guilty of a criminal offense or comparable ordinance violation;

(b) The person who is the subject of the record has not been adjudicated guilty of any of the charges stemming from the arrest or alleged criminal activity to which the records expunction petition pertains;

(c) The person who is the subject of the record has not secured a prior records expunction or sealing under this section, former s. 893.14, or former s. 901.33; and

(d) Such record has been sealed under this section, former s. 893.14, or former s. 901.33 for at least 10 years; except that, this condition shall not apply in any instance in which an indictment or information was not filed against the person who is the subject of the record.

(3) Notwithstanding subsection (2), criminal history records maintained by the Department of Law Enforcement may be ordered expunged only upon a specific finding by a circuit court of unusual circumstances requiring the exercise of the extraordinary equitable powers of the court. Upon a finding that the criteria set out in paragraphs (2)(a)-(c) have been met, the records maintained by the department may be ordered sealed by any court of competent jurisdiction; and thereafter such records and other records sealed pursuant to this section, former s. 893.14, former s. 901.33, or similar laws, shall be nonpublic records, available only to the subject, his attorney, or to criminal justice agencies for their respective criminal justice purposes. An order sealing criminal history records pursuant to this subsection shall not be construed to require that the records be surrendered to the court, and such records shall continue to be maintained by the department.

(4) In judicial proceedings under subsections (2) and (3), it shall not be necessary to make any agency other than the state a party. The appropriate state attorney shall be served with the petition and shall respond after a review of the petitioner's entire multistate criminal history record. If relief is granted, the clerk of the court shall certify copies of the order to the prosecutor and to the arresting agency. The arresting agency shall be responsible for forwarding the order to the Department of Law Enforcement and to any other agency to which the arresting agency itself disseminated the criminal history record information within the purview of the order. The Department of Law Enforcement shall forward the order to all agencies, including the Federal Bureau of Investigation, to which it disseminated the affected criminal history information. The clerk of the court shall certify a copy of the order to any other agency which the records of the clerk reflect has received the affected criminal history information from the court. A notation indicat-

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ing compliance with an order to expunge may be retained for use thereafter only to confirm the expunction upon inquiry of the ordering court.

(5) Notwithstanding other laws to the contrary, a criminal justice agency may honor laws, court orders, and official requests of other jurisdictions relating to expunction, sealing, correction or confidential handling of criminal history records or information derived therefrom.

(6) The effect of expunction or sealing of criminal history records under this section or other provisions of law, including former ss. 893.14 and 901.33, shall be as follows:

(a) When all criminal history records, including the records maintained by the Department of Law Enforcement and the courts, have been expunged, the subject of such records shall be restored, in the full and unreserved contemplation of the law, to the status occupied before the arrest, indictment, information, or judicial proceedings covered by the expunged record.

(b) When all criminal history records, except for records retained under seal by the courts or the Department of Law Enforcement, have been expunged, the subject of such records may lawfully deny or fail to acknowledge the events covered by the expunged or sealed records except in the following circumstances:

1. When the person who is the subject of the record is a candidate for employment with a criminal justice agency;

2. When the person who is the subject of the record is a defendant in a criminal prosecution;

3. When the person who is the subject of the record subsequently petitions for relief under this section; or

4. When the person who is the subject of the record is a candidate for admission to The Florida Bar.

The courts or the Department of Law Enforcement may refer to and disseminate information contained in sealed records in any of these circumstances. Subject to the exceptions stated herein, no person as to whom an expunction or sealing has been accomplished shall be held thereafter under any provision of law of this state to be guilty of perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge expunged or sealed criminal history records.

(7) An order or request to expunge or seal a criminal history record shall be deemed an order or request to seek the expunction or sealing of such record by all other agencies and persons known to have received it.

(8) Each petition to a court for sealing or expunction of criminal history records shall be complete only when accompanied by the petitioner's sworn statement that, to the best of his knowledge and belief, he is eligible for such a sealing or expunction.

Added by Laws 1980, c. 80-409, § 11, eff. Oct. 1, 1980.

Law Review Commentaries

Florida Rules of Criminal Procedure: 1977 Amendments. John F. Yetter, 5 Fla.State L.Rev. 241 (1977).

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½. Validity

To permit a law to stand whereby the legislature requires the destruction of judicial records would permit an unconstitutional encroachment by the legislative branch on the procedural responsibilities granted exclusively to the Supreme Court to establish additional rules of practice and procedure. Johnson v. State, 336 So.2d 93 (1976).

To extent that § 901.33 (repealed; see, now, this section) governing expungement of records of arrest of first offenders found innocent and of those persons against whom criminal proceedings are dismissed granted a substantive right to a defendant the statute was valid; however, to extent that it attempted to establish procedure for accomplishing such right it was an encroachment on the judicial function and, therefore, unconstitutional; hence, the Supreme Court would consider adoption of a rule to effectuate such legislative intent by requiring the sealing of court records of first offenders found innocent or those against whom criminal proceedings are dismissed. Id.

1. Construction and application

Order unsealing defendant's felony arrest record and court file concerning narcotics possession offense was properly entered, where the court ascertained that there were "several acts" involved in defendant's August 14, 1977 arrest, where it was also clear that the "driving under the influence" charge, on which defendant was convicted, was directly "related to" the possession offense which was nolle prossed, and where the nolle prosse did not include the d. u. i. offense. Polseki v. State, App., 371 So.2d 548 (1979).

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In hearing on defendant's motion to expunge record of his arrest and conviction of manslaughter under applicable rule following successful appeal, error occurred in refusing to order expungement of record for reason that trial judge had read in presentence report, which was obtained after original conviction, that defendant had been convicted of some traffic violations, since they were neither pleaded nor properly proven by State where records of conviction were not furnished but merely a hearsay statement of a nonattending witness with no right to cross-examination afforded. Murphy v. State, App., 363 So.2d 581 (1978).

If, in hearing on defendant's motion to expunge record of his arrest and conviction of manslaughter under applicable rule, defendant's conviction for some traffic violations had been properly pleaded and proved by State, such convictions would have constituted a sufficient bar to defendant's request for expungement. Id.

Court records concerning plea of guilty of grand larceny and plea of guilty to possession of short-barreled shotgun entered by two defendants, neither of whom had previously been convicted of criminal offense, and both of whom had successfully completed probationary period following adjudication of guilt, would be sealed from public view in accordance with Johnson v. State, 336 So.2d 93. Garcia v. State, App., 355 So.2d 227 (1978).

Expungement statute (this section), which has been construed as allowing an arrest record to be sealed in a proper case, is retroactive and, hence, may apply to record of an arrest that occurred prior to effective date of statute. Capuano v. State, App., 347 So.2d 629 (1977).

Accused did not lose benefits of former § 901.33 (repealed; see, now, this section) providing for expungement of arrest record for one acquitted or released without being adjudicated guilty because, before applying under statute, accused was arrested and adjudicated guilty of another offense; former § 901.33 (repealed; see, now, this section) plainly extended its remedy to one who, at time of arrest, "never previously" was convicted and who was then acquitted or released without adjudication of guilt and consequently accused's entitlement to remedy was not disseized by subsequent adjudication. State v. Zawistowski, App., 339 So.2d 315 (1976).

Regarding ambiguity in former § 901.33 (repealed; see, now, this section) which offered expungement of arrest record for one "acquitted or released without being adjudicated guilty," such as one released on probation with no adjudication, while withholding former provision's benefits "when the adjudication of nonguilt," which a withheld judgment on one count and nolle prosequi on another plainly were not, "did not include all" multiple charges simultaneously made, first part of statute would be given effect over subsequent ambiguity; accordingly, accused, against whom adjudication of guilt was withheld on one count and second count was nolle prossed, was entitled to statutory benefits. Id.

Courts have the authority to seal their records from public view where the ends of justice require. Johnson v. State, 336 So.2d 93 (1976).

Former § 901.33 (repealed; see, now, this section) which required the expunction of all records related to certain arrests, charges, trials and dismissals of certain violations of law or ordinance upon order of the court was applicable to records in the custody of state attorneys. Op.Atty.Gen., 076-70, April 5, 1976.

A court order to expunge a record means that such record should be physically annihilated, destroyed, or obliterated. An order to expunge records cannot be interpreted to mean the removal of all references to the person in question and the retention of said records in a safe place for future proceedings. Op.Atty.Gen., 075-39, Feb. 12, 1975.

2. Prior offense

Since it appeared affirmatively from record that defendant had been previously convicted of violation of municipal ordinance against public drunkenness, he was not entitled to order expunging record of his arrest for public drunkenness, unlawful possession of marijuana and unlawful possession of barbiturates to which he had entered plea of nolo contendere. State v. Sobie, App., 343 So.2d 73 (1977).

3. Review

Although movant was formerly a defendant in a criminal case, where he was not a defendant at time he filed his motion to expunge his arrest record, relief which was civil in nature, fact that this section directed that motion to expunge be filed with same court wherein movant was formerly charged did not change nature of relief sought, and final order denying motion was reviewable by appeal. Capuano v. State, App., 347 So.2d 629 (1977).

943.06 Criminal Justice Information Systems Council

There is created a Criminal Justice Information Systems Council within the Department of Law Enforcement.

(1) The council shall be composed of 10 members, consisting of the Attorney General or a designated assistant; the Secretary of the Department of Corrections; the chairman of the Parole and Probation Commission; the State Courts Administrator; and 6 members, to be appointed by the Governor, consisting of 2 sheriffs, 2 police chiefs, 1 public defender, and 1 state attorney.

(2) Members appointed by the Governor shall be appointed for terms of 4 years, except that in the first appointment under this section, two members shall be appointed for terms of 2 years, two members for terms of 3 years, and two members for terms of 4 years; and the terms of such members shall be designated by the Governor at the time of appointment. No appointive member shall serve beyond the time he ceases to hold the office or employment by reason of which he was eligible for appointment to the council. Any member appointed to fill a vacancy occurring because of death, resig-

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nation, or ineligibility for membership shall serve only for the unexpired term of his predecessor or until a successor is appointed and qualifies.

(3) The council shall annually elect its chairman and other officers. The council shall hold at least four regular meetings each year at the call of the chairman or upon the written request by three members of the council. A majority of the members of the council constitutes a quorum.

(4) Membership on the council shall not disqualify a member from holding any other public office or being employed by a public entity except that no member of the legislature shall serve on the council. The legislature finds that the council serves a state, county, and municipal purpose and that service on the council is consistent with a member's principal service in a public office or employment.

(5) Members of the council shall serve without compensation, but shall be entitled to be reimbursed for per diem and traveling expenses as provided by § 112.061.

Laws 1974, c. 74-386, § 6, eff. Aug. 1, 1974. Amended by Laws 1977, c. 77-174, § 1, eff. Aug. 2, 1977; Laws 1978, c. 78-347, § 2, eff. Oct. 1, 1978; Laws 1980, c. 80-409, § 12, eff. Oct. 1, 1980.

Repeal

Laws 1978, c. 78-323, § 4, the "Sundown Act", providing for the repeal of boards, committees, and councils which have held official meetings since January 1, 1975, provides for the repeal of this section, relating to the criminal justice information systems council, on October 1, 1981. For a complete listing of all entities affected by Laws 1978, c. 78-323, see § 11.611 and notes thereunder.

Laws 1977, c. 77-174, a reviser's bill, amended subsec. (2) of this section to reflect language editorially inserted in the interest of clarity by the division of statutory revision and indexing.

Laws 1978, c. 78-347, deleted "criminal" preceding "law enforcement" in the department name.

Laws 1980, c. 80-409, § 12, added the secretary of the department of corrections as a council member.

943.07 Renumbered as 943.045 and amended by Laws 1980, c. 80-409, § 1, eff. Oct. 1, 1980

943.08 Duties; Criminal Justice Information Systems Council

The council shall review operating policies and procedures and make recommendations to the Executive Director of the Department of Law Enforcement relating to the following areas:

(1) The management control of criminal justice information systems, criminal intelligence information systems, and criminal investigative information systems maintained by the Department of Law Enforcement;

(2) The installation of criminal justice information systems, criminal intelligence information systems, and criminal investigative information systems by the Department of Law Enforcement and the exchange of information by such systems within the state and with similar systems and criminal justice agencies in other states and in the Federal Government;

(3) The exchange of criminal justice information and criminal justice intelligence information and the operation of criminal justice information systems and criminal justice intelligence information systems, both interstate and intrastate;

(4) The operation and maintenance of computer hardware and software within criminal justice information systems, criminal intelligence information systems, and criminal investigative information systems maintained by the department;

(5) The physical security of the system, to prevent unauthorized disclosure of information contained in the system and to ensure that the criminal justice information in the system is currently and accurately revised to include subsequently revised information;

(6) The security of the system, to ensure that criminal justice information, criminal intelligence information, and criminal investigative information will

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be collected, processed, stored, and disseminated in such manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid by unauthorized individuals or agencies;

(7) The purging or sealing of criminal justice information upon order of a court of competent jurisdiction or when authorized by law;

(8) The dissemination of criminal justice information to persons or agencies not associated with criminal justice when such dissemination is authorized by law;

(9) The access to criminal justice information maintained by any criminal justice agency by any person about whom such information is maintained for the purpose of challenge, correction, or addition of explanatory material;

(10) The training of employees of the department and other state and local criminal justice agencies in the proper use and control of criminal justice information; and

(11) Such other areas as relate to the collection, processing, storage, and dissemination of criminal justice information, criminal intelligence information, and criminal justice investigative information.

Laws 1974, c. 74-386, § 6, eff. Aug. 1, 1974. Amended by Laws 1977, c. 77-174, § 1, eff. Aug. 2, 1977; Laws 1980, c. 80-409, § 13, eff. Oct. 1, 1980.

Repeal

Laws 1978, c. 78-323, § 4, the "Sundown Act", providing for the repeal of boards, committees, and councils which have held official meetings since January 1, 1975, provides for the repeal of this section, relating to the criminal justice information systems council, on October 1, 1981. For a complete listing of all entities affected by Laws 1978, c. 78-323, see § 11.611 and notes thereunder.

Laws 1977, c. 77-174, a reviser's bill, amended subsec. (5) of this section to reflect language editorially substituted in the interest of clarity by the division of statutory revision and indexing.

Laws 1980, c. 80-409, § 13, rewrote subsecs. (1) and (2); added new subsecs. (3), (4), (6) and (10), renumbered other provisions accordingly; and, rewrote subsec. (11).

943.09 Division of Standards and Training

(1) There is created a Division of Standards and Training within the Department of Law Enforcement. The department shall employ a division director. However, the executive director shall co[illegible]t with the Police Standards and Training Commission prior to making any [illegible]nployment recommendations to the Governor and Cabinet. It shall be the [illegible]ty of the division director to supervise, direct, coordinate, and administer all activities of the division.

(2) The division shall:

(a) Assist the department and commission in the exercise of their respective duties under this chapter.

(b) Establish a central repository of records necessary to the proper administration of this act.

(c) Administer the programs and funds provided for in ss. 943.15, 943.17, and 943.25.

(d) Coordinate proceedings relating to law enforcement certification or decertification.

(3) The commission may direct the division to conduct studies and analyses relating to police officer training, education, career development, recruitment; and assessment and to similar matters affecting police professionalization.

Laws 1974, c. 74-386, § 7, eff. Aug. 1, 1974. Amended by Laws 1977, c. 77-174, § 1, eff. Aug. 2, 1977; Laws 1978, c. 78-347, § 2, eff. Oct. 1, 1978; Laws 1980, c. 80-71, § 1, eff. July 1, 1980.

Laws 1977, c. 77-174, a reviser's bill, amended this section to reflect language editorially inserted in the interest of clarity by the division of statutory revision and indexing.

Laws 1978, c. 78-347, deleted "criminal" preceding "law enforcement" in the department name.

Laws 1980, c. 80-71, § 1, designated subsections; in subsec. (1) deleted at the end of the second sentence "with the approval of the police standards and training commission" and added the third and fourth sentences; and added subsecs. (2) and (3).

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Chapter 119. Public Records

119.01 General state policy on public records

It is the policy of this state that all state, county, and municipal records shall at all times be open for a personal inspection by any person.
Amended by Laws 1973, c. 73-98, § 1, eff. Oct. 1, 1973; Laws 1975, c. 75-225, § 2, eff. July 1, 1975.

119.011 Definitions

For the purpose of this chapter:

(1) "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

(2) "Agency" shall mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission or other separate unit of government created or established by law and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

(3)(a) "Criminal intelligence information" means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

(b) "Criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

(c) "Criminal intelligence information," and "criminal investigative information" shall not include:

1. The time, date, location, and nature of a reported crime;

2. The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.07(3)(h);

3. The time, date, and location of the incident and of the arrest;

4. The crime charged;

5. Documents given or required by law or agency rule to be given to the person arrested; and

6. Informations and indictments except as provided in s. 905.26.

(d) The word "active" shall have the following meaning:

1. Criminal intelligence information shall be considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.

2. Criminal investigative information shall be considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

In addition criminal intelligence and criminal investigative information shall be considered "active" while such information is directly related to pending prosecutions or appeals. The word "active" shall not apply to information in cases which are barred from prosecution under the provisions of s. 775.15 or other statute of limitation.

(4) "Criminal justice agency" means any law enforcement agency, court, or prosecutor. The term also includes any other agency charged by law with criminal law enforcement duties, or any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties.
Amended by Laws 1973, c. 73-98, § 2, eff. Oct. 1, 1973; Laws 1975, c. 75-225, § 3, eff. July 1, 1975; Laws 1979, c. 79-187, § 1, eff. June 14, 1979.

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119.02 Penalty

Any official who shall violate the provisions of § 119.01 shall be subject to removal or impeachment and in addition shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

119.031 Keeping records in safe places; copying or repairing certified copies

Insofar as practicable, custodians of public records shall keep them in fireproof and waterproof safes, vaults or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use. All public records should be kept in the buildings in which they are ordinarily used. Record books should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Whenever any state, county or municipal records are in need of repair, restoration or rebinding, the head of such state agency, department, board or commission, the board of county commissioners of such county or the governing body of such municipality may authorize that the records in need of repair, restoration or rebinding be removed from the building or office in which such records are ordinarily kept for the length of time required to repair, restore or rebind them. Any public official who causes a record book to be copied shall attest it and shall certify on oath that it is an accurate copy of the original book. The copy shall then have the force and effect of the original.

119.07 Inspection and examination of records; exemptions

(1) Every person having custody of public records shall permit them to be inspected and examined at reasonable times and under his supervision by any person, and he shall furnish certified copies thereof on payment of fees as prescribed by law.

(2) (a) All public records which presently are deemed by law to be confidential or which are prohibited from being inspected by the public, whether provided by general or special acts of the legislature or which may hereafter be so provided, shall be exempt from the provisions of this section.

(b) All public records referred to in §§ 794.03, 198.09, 199.222, 658.10(1), 624.319(3), (4), 624.311(2), and 63.181, are hereby exempt from the provisions of this section.

Historical Note

Derivation:
Laws 1967, c. 67-125, § 7.

Laws 1967, c. 67-125 became law without Governor's approval.

Law Review Commentaries

Arrest and credit records. 24 U. Fla.L.R. 681 (1972).

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	92A-3002 92A-3003 92A-3005	X		X X
2. Privacy and Security Council	92A-3005			X
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	92A-3003			X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	92A-3003			X
3.12 Authorizes to Private Sector	92A-3003			X
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	92A-3003			X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies				
3.22 Authorizes to Private Sector				
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies	92A-3003			X
3.25 Prohibits to Private Sector	92A-3003			X
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	92A-3003			X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies				
3.32 Authorizes to Private Sector				
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies	92A-3003			X
3.35 Prohibits to Private Sector	92A-3003			X
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	92A-3006	X		
5. Right to Challenge	92A-3006	X		
6. Judicial Review of Challenged Information	92A-3006	X		
7. Purging Non-Conviction Information				
8. Purging Conviction Information				

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information	24A-3504			X
11. Removal of Disqualifications	24A-3504			X
12. Right to State Non-Existence of Record	24A-3504			X
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	Reg. 140-2-03 92A-3004	X		X
14.2 Auditing Requirements	92A-3003 Reg. 140-2-07	X		X
14.3 Other Accuracy/Completeness Requirements	92A-302 92A-2501	X X		
15. Dedication	92A-3003			X
16. Civil Remedies	92A-3007	X		
17. Criminal Penalties	92A-9939	X		
18. Public Records	27-220 40-2701	X X		
19. Separation of Files	92A-3005 Reg. 140-2-02	X		X
20. Regulation of Intelligence Collection	92A-3005 Reg. 140-2-02	X		X
21. Regulation of Intelligence Dissemination	92A-3005 Reg. 140-2-02	X		X
22. Security	92A-3003			X
22.1 Physical (Building) Security	Reg. 140-2-08	X		
22.2 Administrative Security	Reg. 140-2-09	X		
22.3 Computer Security	Reg. 140-2-02 Reg. 140-2-08	X X		
23. Transaction Logs	92A-3003 Reg. 140-2-02 Reg. 140-2-06	X X		X
24. Training Employees	92A-3003(e), (f) Reg. 140-2-09	X		X
25. Listing of Information Systems				
26. FOIA (Including CJI)	40-2701	X		
27. FOIA (Excluding CJI)				
28. Central State Repository	92A-3002	X		

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Georgia Code

CHAPTER 92A-30. GEORGIA CRIME INFORMATION CENTER

Sec.

92A-3003	Functions
92A-3004	Duties of criminal justice agencies
92A-3005	Georgia Crime Information Center Council

92A-3003 Functions

The Georgia Crime Information Center shall:

(a) Obtain and file fingerprints, descriptions, photographs, and any other pertinent identifying data on persons who:

(1) have been or are hereafter arrested or taken into custody in this State:

(i) for an offense which is a felony;

(ii) for an offense which is a misdemeanor or a violation of an ordinance involving burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a child, dealing in stolen property, dangerous drugs, marijuana, narcotics, firearms, dangerous weapons, explosives, pandering, prostitution, sex offenses where children are victims, or worthless checks;

(iii) for an offense charged as disorderly conduct but which relates to an act connected with one or more of the offenses under subparagraph (ii);

(iv) as a fugitive from justice;

(v) for any other offense designated by the Attorney General; or

(2) are or become well-known or habitual offenders, or

(3) are currently or become confined to any prison, penitentiary or other penal institution, or

(4) are unidentified human corpses found in State.

(b) Compare all fingerprint and other identifying data received with those already on file and whether or not a criminal record is found for that person, at once inform the requesting agency or arresting officer of such facts as may be disseminated consistent with applicable security and privacy laws and regulations. A log shall be maintained of all disseminations made of each individual criminal history including at least the date and recipient of such information.

(c) Provide a uniform crime reporting system for the periodic collection, analysis, and reporting of crimes reported to and otherwise processed by any and all law enforcement agencies within the state as defined and provided for elsewhere in this Chapter. The Georgia Crime Information Center will develop procedures for periodically auditing crime reporting practices of local law enforcement agencies to insure compliance with the standards of national and state uniform crime reporting systems.

(d) Develop, operate and maintain an information system which will support the collection, storage, retrieval, and dissemination of all crime and offender data described in this Chapter consistent with those principles of scope, security and responsiveness prescribed by this Chapter.

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(e) Cooperate with all criminal justice agencies within the State in providing those forms, procedures, standards and related training assistance necessary for the uniform operation of the statewide GCIC.

(f) Offer assistance and, when practicable, instruction to all local law enforcement agencies in establishing efficient local records systems.

(g) Compile statistics on the nature and extent of crime in Georgia and compile other data related to planning for and operating criminal justice agencies, provided that such statistics do not identify persons. GCIC will make available all such statistical information obtained to the Governor, the General Assembly, and any other governmental agencies whose primary responsibilities include the planning, development, or execution of crime reduction programs. Access to such information by the latter governmental agencies will be on an individual written request basis wherein must be demonstrated a need to know, the intent of any analyses, dissemination of such analyses, and any security provisions deemed necessary by GCIC.

(h) Periodically publish statistics no less frequently than annually that do not identify persons, agencies, corporations or other legal entities and report such information to the Governor, the General Assembly, the State Crime Commission, State and local criminal justice agencies and the general public. Such information shall accurately reflect the level and nature of crime in this State and the operations in general of the different types of agencies within the criminal justice system.

(i) Make available upon request, to all local and State criminal justice agencies, to all Federal criminal justice agencies and criminal justice agencies in other States any information in the files of the GCIC which will aid these agencies in the performance of their official duties. For this purpose the GCIC shall operate on a 24-hour basis, seven days a week. Such information, when authorized by the council, may also be made available to any other agency of this State or political subdivision of this State, and to any other Federal agency, upon assurance by the agency concerned that the information is to be used for official purposes only in the prevention or detection of crime or the apprehension of criminal offenders.

(j) Cooperate with other agencies of this State, the crime information agencies of other States, and the Uniform Crime Reports and National Crime Information Center systems of the F.B.I. in developing and conducting an interstate, National and international system of criminal identification, records and statistics.

(k) Provide the administrative mechanisms and procedures necessary to respond to those individuals who file requests to view their own records as provided for elsewhere in this Chapter and to cooperate in the correction of the central GCIC records and those of contributing agencies when their accuracy has been successfully challenged either through the related contributing agencies or by court order issued on behalf of the individual.

(l) Institute the necessary measures in the design, implementation, and continued operation of the criminal justice information system to ensure the privacy and security of the system. This will include establishing complete control over use and access of the system and restricting its

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integral resources and facilities to those either possessed or procured and controlled by criminal justice agencies as defined in this Chapter. Such security measures must meet standards to be set by the GCIC and its Advisory Council as well as those set by the nationally operated systems for interstate sharing of information.

(m) Provide availability by means of data processing, to files listing motor vehicle drivers' license numbers, motor vehicle registration numbers, wanted and stolen motor vehicles, outstanding warrants, identifiable stolen property, and such other files as may be of general assistance to law enforcement agencies.

(n) For the purpose of enforcing the provisions of this Chapter, GCIC shall maintain a field coordination and support unit whose agency shall have all the power conferred by law upon any peace officer of this State.

(o) Make records of adjudications of guilt available to private persons and businesses as follows:

(1) Make available to employers or their designated representatives, for the purpose of making employment and job assignment decisions, records of employees or prospective employees whose duties involve or may involve:

(A) Working in or near private dwellings without immediate supervision;

(B) Custody or control over or access to cash or valuable items;

(C) Knowledge of or access to secret processes, trade secrets or other confidential business information;

(D) Insuring the security or safety of other employees, customers or property of the employer.

(2) Make available to appropriate personnel, or representatives designated by the owner or manager, of any business or commercial establishment records of persons apprehended for or suspected of a specific criminal act or acts of which such establishment, or an employee of such establishment in the course of his employment, is a victim.

(3) GCIC shall charge fees for disseminating records pursuant to this Section which will raise an amount of revenue which approximates, as nearly as practicable, the direct and indirect costs to the State of providing such disseminations.

(4) Information disseminated pursuant to paragraph (1) above shall be available only to persons involved in the hiring, background investigation or job assignment of the person whose record is disseminated. Information disseminated pursuant to paragraph (2) above shall be available only to persons involved in deciding whether or not to prefer charges against the person whose record is disseminated or persons engaged in the investigation of such specific criminal act or acts. Any dissemination of any information obtained pursuant to this subsection to any person not specifically authorized hereby to receive it or any use of any information obtained pursuant to this subsection for any purpose other than the purpose for which it was obtained shall constitute a violation of section 92A-9939.

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(5) In the event that a decision is made adverse to a person whose record was obtained pursuant to this subsection, the person will be informed by the business or person making such adverse decision of all information pertinent to this decision. This shall include information that a record was obtained from GCIC, the specific contents of such record and the effect that such record had upon the decision.

(6) Neither GCIC, its employees, nor any other agency or employee of the State shall be responsible for the accuracy of information or have any liability for defamation, invasion of privacy, negligence or any other claim in connection with any dissemination of information pursuant to this subsection.

(7) GCIC shall disseminate records pursuant to paragraph (1) only upon positive identification by fingerprint comparison. GCIC shall disseminate records pursuant to paragraph (2) on fingerprint identification and when fingerprints are unavailable or time prohibits the use of fingerprints for identification, identification may be made through the use of the name, date of birth, sex and race of the person with appropriate qualifications. Local criminal justice agencies may disseminate records of adjudication of guilt, without fingerprint comparison or prior contract with GCIC, to the same individuals and for the same purposes as described in paragraphs (1) and (2) above, and may charge fees as needed to reimburse such agency for any costs of such checking.

(8) The GCIC Council is hereby empowered to adopt rules, regulations and forms to implement this subsection and provide for security and privacy of information disseminated pursuant hereto giving first priority to the criminal justice requirements of the Chapter. Such rules may include requirements for users, audits of users and such other procedures as may be necessary to prevent unauthorized use of criminal history record information and to insure compliance with Federal regulations.

The GCIC Council may adopt rules authorizing local law enforcement agencies to act as an agent for GCIC in receiving requests for information and disseminating information pursuant to such requests.

(p) Make records of adjudications of guilt available to any other agency of this State or political subdivision of this State or to any Federal agency as follows:

(1) Make available to public agencies, political subdivisions, authorities and instrumentalities, State or Federal, or their designated representatives, for the purpose of making employment and job assignment decisions, records of employees or prospective employees whose duties involve or may involve:

(A) working in or near private dwellings or public buildings and facilities without immediate supervision;

(B) custody or control over or access to cash or valuable items;

(C) knowledge of or access to secret processes or confidential governmental information;

(D) insuring the security or safety of other employees, the general public or property of the State or Federal political subdivisions, authorities and instrumentalities.

(2) Make available to appropriate counsel, or representatives designated by the State, a political subdivision, authority or instrumentality thereof, or to any Federal agency, records of persons apprehended for or suspected of a specific criminal act or acts of which such State, political subdivision, authority or instrumentality thereof, or Federal agency, or an employee thereof or member of the general public at such institution or agency in the course of his employment or by reason of his presence at such institution or agency is a victim.

(3) The Georgia Crime Information Center may charge fees for disseminating records pursuant to this section which will raise an amount of revenue which approximates, as nearly as practicable, the direct and indirect costs to the State of providing such disseminations.

(4) Any dissemination of any information obtained pursuant to this subsection to any person not specifically authorized hereby to receive it or any use of any information obtained pursuant to this subsection for any purpose other than the purpose for which it was obtained shall constitute a violation of section 92A-9939.

(A) Information disseminated pursuant to paragraph (1) above shall be available only to persons involved in the hiring, background investigation or job assignment of the person whose record is disseminated. In the event that a decision is made adverse to a person whose record was obtained pursuant to this subsection, the person will be informed by the State agency, political subdivision or Federal agency or person making such adverse decision of all information pertinent to this decision. This shall include information that a record was obtained from the Georgia Crime Information Center, the specific contents of such record and the effect that such records had upon the decision.

(B) Information disseminated pursuant to paragraph (2) above shall be available only to persons involved in deciding whether or not to prefer charges against the person whose record is disseminated or persons engaged in the investigation of such specific criminal act or acts.

(5) Neither the Georgia Crime Information Center, its employees nor any other agency or employee of the State shall be responsible for the accuracy of information or have any liability for defamation, invasion of privacy, negligence or any other claim in connection with any dissemination of information pursuant to this subsection.

(6) The Georgia Crime Information Center shall disseminate records pursuant to paragraph (1) only upon positive identification by fingerprint comparison. The Georgia Crime Information Center shall disseminate records pursuant to paragraph (2) on fingerprint identification and, when fingerprints are unavailable or time prohibits the use of fingerprints for identification, identification may be made through the use of the name, date of birth, sex and race of the person with appropriate qualifications. Local criminal justice agencies may disseminate records of adjudication or guilt, without fingerprint comparison or prior contact with the Georgia Crime Information Center, to the same individuals and for the same purposes as described in paragraphs (1) and (2) above and may charge fees as needed to reimburse such agency for any costs of such checking.

(7) The Georgia Crime Information Center Council is hereby empowered to adopt rules, regulations and forms to implement this subsection and provide for security and privacy of information disseminated pursuant hereto giving first priority to the criminal justice requirements of this Chapter. Such rules may include requirements for users, audits of users and such other procedures as may be necessary to prevent unauthorized use of criminal history record information and to insure compliance with federal regulations.

(8) The Georgia Crime Information Center Council may adopt rules authorizing any local law enforcement agency to act as an agent for the Georgia Crime Information Center in receiving requests for information and disseminating information pursuant to such requests.

(Acts 1973, pp. 1301, 1305; 1976, pp. 617, 619, 620; 1976, pp. 1401, 1402; 1977, pp. 1243, 1244; 1978, p. 1981; 1980, p. 394, eff. July 1, 1980.)

Editorial Note

Acts 1978, p. 1981, added subsection (p).

Acts 1980, p. 394, added the last sentence to subsection (c).

ANNOTATIONS

Cited. Op. Atty. Gen. U80-9.

Information collection

Opinion contains updated list of crimes and offenses for which Crime Information Center is authorized to collect and file identifying data. Op. Atty. Gen. 79-56.

92A-3004 Duties of criminal justice agencies

(a) All criminal justice agencies within the State shall submit to GCIC fingerprints, descriptions, photographs (when specifically requested), and other identifying data on persons who have been lawfully arrested or taken into custody in this State for all felonies and certain misdemeanors and as otherwise described in subsection 92A-3003(a). It shall be the duty of all chiefs of police, sheriffs, prosecuting attorneys, courts, judges, parole and probation officers, wardens, or other persons in charge of correctional institutions in this State to furnish the GCIC with any other data deemed necessary by GCIC to carry out its responsibilities under this Chapter. Specifically, the responsibilities of criminal justice agencies in this area will require that:

(1) All persons in charge of law enforcement agencies shall obtain, or cause to be obtained, the fingerprints according to the fingerprint system of identification established by the Director of the F.B.I., full face and profile photographs (if photo equipment is available), and other available identifying data, of each person arrested or taken into custody for an offense of a type designated in subsection 92A-3003(a), of all persons arrested or taken into custody as fugitives from justice, and of all unidentified human corpses in their jurisdictions, but photographs need not be taken if it is known that photographs of the type listed taken within the previous year, are on file. Fingerprints and other identifying data of persons arrested or taken into custody for offenses other than those designated may be taken at the discretion of the law enforcement agency

concerned. Any person arrested or taken into custody and subsequently released without charge, or cleared of the offense through court proceedings, shall have any fingerprint record taken in connection therewith returned if required by statute or upon court order. Any such dispositions must also be reported to the GCIC.

(2) Fingerprints and other identifying data required to be taken under paragraph (a)(1) shall be forwarded within 24 hours after taking for filing and classification, but the period of 24 hours may be extended to cover any intervening holiday or weekend. Photographs taken shall be forwarded at the discretion of the agency concerned, but, if not forwarded, the fingerprint record shall be marked "Photo available" and the photographs shall be forwarded subsequently if GCIC so requests.

(3) All persons in charge of law enforcement agencies shall submit to the GCIC detailed descriptions of arrest warrants and related identifying data immediately upon determination of the fact that the warrant cannot be served for the reasons stated. If the warrant is subsequently served or withdrawn the law enforcement agency concerned must immediately notify GCIC of such service or withdrawal. Also, the agency concerned must annually, no later than January 31 of each year, and at other times if requested by GCIC, confirm to GCIC all arrest warrants of this type which continue to be outstanding.

(4) All persons in charge of State penal correctional institutions shall obtain fingerprints, according to the fingerprint system of identification established by the Director of the F.B.I. or as otherwise directed by GCIC, and full face and profile photographs of all persons received on commitment to these institutions. The print(s) so taken shall be forwarded to GCIC, together with any other identifying data requested, within 10 days after the arrival at the institution of the person committed. At the time of release, the institution will again obtain fingerprints as before and forward them to GCIC within 10 days along with any other related information requested by GCIC. Immediately upon release, the institution shall notify GCIC of the release of such person.

(5) All persons in charge of law enforcement agencies, all clerks of court, all municipal justices where they have no clerks, all justices of the peace, all persons in charge of State and county probation and parole offices, shall supply GCIC with the information described in section 92A-3003 on the basis of the forms and instruction to be supplied by GCIC.

(6) All persons in charge of law enforcement agencies in this State shall furnish GCIC with any other identifying data required in accordance with guidelines established by GCIC. All law enforcement agencies and penal and correctional institutions in this State having criminal identification files shall cooperate in providing to GCIC copies of such items in these files as will aid in establishing the nucleus of the State criminal identification file.

(b) All criminal justice agencies within the State shall submit to the Georgia Crime Information Center periodically at a time and in such form as prescribed by the Georgia Crime Information Center information regarding only the cases within its jurisdiction and in which it is or has

been actively engaged. Said report shall be known as the "Uniform Crime Report" and shall include crimes reported and otherwise processed during the period preceding the period of report. Said report shall contain the number and nature of offenses committed, the disposition of such offenses, and such other information as the Georgia Crime Information Center shall specify, relating to the method, frequency, cause and prevention of crime. Local law enforcement agencies upon the request of the Georgia Crime Information Center shall periodically provide for audit samples of incident reports for the preceding reporting period so that the Georgia Crime Information Center may help insure agency compliance with National and State uniform crime reporting requirements.

Any governmental agency which is not included within the description of those departments and agencies required to submit the uniform crime report, which desires to submit such a report, shall be furnished with the proper forms by the Georgia Crime Information Center. When a report is received by the Georgia Crime Information Center from a governmental agency not required to make such a report, the information contained therein shall be included within the periodic compilation provided for in subsection 92A-3003(h).

(c) All law enforcement agencies within the State shall report to GCIC in a manner prescribed by GCIC, all persons wanted by, and all vehicles and identifiable property stolen from their jurisdictions. The report shall be made as soon as is practical after the investigating department or agency either ascertains that a vehicle or identifiable property has been stolen or obtains a warrant for an individual's arrest or determines that there are reasonable grounds to believe that the individual has committed the crime. In no event shall this time exceed 12 hours after the reporting department or agency determines that it has grounds to believe that a vehicle or property was stolen or that the wanted persons should be arrested.

(d) All law enforcement agencies with the State shall, if at any time after making a report as required by subsection (c) of this section it is determined by the reporting department or agency that a person is no longer wanted due to his apprehension or any other factor or when a vehicle or property stolen is recovered, immediately notify the GCIC of such status. Furthermore, if the agency making such apprehension or recovery is other than the one which made the original wanted or stolen report, then it shall immediately notify the originating agency of the full particulars relating to such apprehension or recovery.

(Acts 1973, pp. 1301, 1307; 1976, pp. 617, 620; 1980, pp. 394, 395, eff. July 1, 1980.)

Editorial Note

Acts 1980, pp. 394, 395, added the last sentence to the first paragraph of subsection (b).

92A-3005 Georgia Crime Information Center Council

(a) There is hereby created the Georgia Crime Information Center Council.

(b) The duties and responsibilities of this council are to:

(1) Advise and assist in the establishment of policies under which the GCIC is to be operated.

(2) Insure that the information obtained pursuant to this Chapter shall be restricted to the items specified in this Chapter and insure that the GCIC is administered so as not to accumulate any information or distribute any information that is not specifically approved in this Chapter.

(3) Insure that adequate security safeguards are incorporated so that the data available through this system is used only by properly authorized persons and agencies.

(4) Establish appropriate disciplinary measures to be taken by GCIC in the instance of violations of data reporting or dissemination of laws, rules, and regulations by criminal justice agencies or members thereof covered by this Chapter.

(5) Establish other policies which provide for the efficient and effective use and operation of the GCIC under the limitations imposed by the terms of this Chapter.

(c) The members of the Board of Public Safety shall serve ex officio as members of council and shall constitute the council.

(Acts 1973, pp. 1301, 1310; 1976, pp. 617, 620; 1979, p. 613, eff. April 12, 1979.)

Editorial Note

*Acts 1979, p. 613, substituted a new subsection (c) for former subsections (c) through (f), the effect being to change the membership of the council.

* * * * *

24A-3504 Sealing of records

(a) On application of a person who has been adjudicated delinquent or unruly or on the court's own motion, and after a hearing, the court shall order the sealing of the files and records in the proceeding, including those specified in sections 24A-3502 and 24A-3503, if the court finds:

(1) 2 years have elapsed since the final discharge of the person;

(2) since the final discharge he has not been convicted of a felony, or of a misdemeanor involving moral turpitude, or adjudicated a delinquent or unruly child and no proceeding is pending seeking conviction or adjudication; and

(3) he has been rehabilitated.

(b) Reasonable notice of the hearing shall be given to:

(1) the district attorney;

(2) the authority granting the discharge if the final discharge was from an institution or from parole; and

(3) the law enforcement officers or department having custody of the files and records if the files and records specified in sections 24A-3502 and 24A-3503 are included in the application or motion.

(c) Upon the entry of the order the proceeding shall be treated as if it never occurred. All index references shall be deleted and the person, the court, the law enforcement officers and departments shall properly reply that no record exists with respect to the person upon inquiry in any matter. Copies of the order shall be sent to each agency or official therein named. Inspection of the sealed files and records thereafter may be permitted by an order of the court upon petition by the person who is the subject of the records and only by those persons named in the order.

(Acts 1971, pp. 709, 753.)

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	846-2.5			X
2. Privacy and Security Council	846-2.5			X
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	846-9			X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	846-9			X
3.12 Authorizes to Private Sector	846-9			X
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	846-9			X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	846-9			X
3.22 Authorizes to Private Sector	846-9			X
3.23 Prohibits to Criminal Justice Agencies				
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Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	846-9			X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	846-9			X
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3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	846-14 Reg. Sect. 3	X		X
5. Right to Challenge	846-14 Reg. Sect. 4			X
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information	831-3.2 853-1	X		X X
8. Purging Conviction Information				

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information	831-3.2	X		X
10. Sealing Conviction Information	831-3.1 712-1256	X X		
11. Removal of Disqualifications	853-1 712-1255	X		X
12. Right to State Non-Existence of Record	712-1256 831-3.2	X X		X
13. Research Access	846-9(4)			X
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	846-3 846-5			X X
14.2 Auditing Requirements	846-6 846-13			X X
14.3 Other Accuracy/Completeness Requirements	846-4			X
15. Dedication				
16. Civil Remedies				
17. Criminal Penalties	28-46 846-16	X		X
18. Public Records	571-84 92-9 92-50	X X X		
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security				
22.1 Physical (Building) Security	846-7			X
22.2 Administrative Security	846-7			X
22.3 Computer Security	846-7			X
23. Transaction Logs	846-6			X
24. Training Employees	846-7(5)			X
25. Listing of Information Systems				
26. FOIA (Including CJI)	92-50	X		
27. FOIA (Excluding CJI)				
28. Central State Repository	846-2, 2.5			X

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Hawaii Revised Statutes

§831-3.1 Prior convictions; criminal records; noncriminal standards. (a) A person shall not be disqualified from public office or employment by the State or any of its political subdivisions or agencies except under section 831-2(c), or be disqualified to practice, pursue, or engage in any occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is required by the State or any of its political subdivisions or agencies, solely by reason of a prior conviction of a crime; provided that with respect to liquor licenses, this subsection shall not apply to a person who has been convicted of a felony.

* * *

[am L 1979, c 53, §3]

Revision Note

Only the subsection amended is included in this Supplement.

Amendment Note

L 1979 amended subsection (a).

§831-3.2 Expungement orders. (a) The attorney general, or his duly authorized representative within the department of the attorney general, upon written application from a person arrested for, or charged with but not convicted of a crime, shall issue an expungement order annulling, canceling, and rescinding the record of arrest; provided that an expungement order shall not issue (1) in the case of an arrest for a felony or misdemeanor where conviction has not been obtained because of bail forfeiture; (2) for a period of five years after arrest or citation in the case of a petty misdemeanor or violation where conviction has not been obtained because of a bail forfeiture; and (3) in the case of an arrest of any person for any offense where conviction has not been obtained because he has rendered prosecution impossible by absenting himself from the jurisdiction.

Any person entitled to an expungement order hereunder may by written application also request return of all fingerprints or photographs taken in connection with his arrest. The attorney general or his duly authorized representative within the department of the attorney general, within 120 days after receipt of such written application, shall, when so requested, deliver, or cause to be delivered, all such fingerprints or photographs of such person, unless such person has a prior record of conviction or is a fugitive from justice, in which case the photographs or fingerprints may be retained by the agencies holding such records.

* * *

[am L 1980, c 12, §1]

Revision Note

Only the subsection amended is included in this Supplement.

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[CHAPTER 846]
CRIMINAL HISTORY RECORD INFORMATION

SECTION

[846-1] DEFINITIONS
846-2 ESTABLISHMENT OF THE DATA CENTER
[846-2.5] PURPOSE OF THE CRIMINAL JUSTICE INFORMATION DATA CENTER
[846-3] REPORTING TO DATA CENTER
[846-4] QUERY OF DATA CENTER
[846-5] REPORTING OF DISPOSITIONS
[846-6] SYSTEMATIC AUDIT
[846-7] SECURITY
[846-8] EXCLUSIONS
[846-9] LIMITATIONS ON DISSEMINATION
[846-10] DISSEMINATION
[846-11] OFFICE OF CORRECTIONAL INFORMATION AND STATISTICS
[846-12] JUVENILE RECORDS
[846-13] ANNUAL AUDITS
[846-14] ACCESS AND REVIEW
[846-15] RULES AND REGULATIONS
[846-16] VIOLATIONS

[§846-1] Definitions. In this chapter, unless a different meaning plainly is required:

(1) "Dissemination" means transmission of criminal history record information to individuals and agencies, other than the criminal justice agency which maintains the criminal history record information, but it does not include the reporting of such information as required by law, the reporting of data on a particular transaction to another criminal justice agency so as to permit the initiation of subsequent criminal justice proceedings, the use of such information by an employee or officer of the agency maintaining the records, and the reporting of a criminal justice transaction to a state, local, or federal repository;

(2) "Criminal history record information system" or "system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information;

(3) "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, and other formal criminal charges, and any disposition arising therefrom, sentencing, formal correctional supervisory action, and release; but does not include intelligence or investigative information, identification information to the extent that such information does not indicate involvement of the individual in the criminal justice system, and information derived from offender-based transaction statistics systems which do not reveal the identity of individuals;

(4) "Criminal justice agency" means:

(A) Courts; or

(B) A government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice;

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(5) "Administration of criminal justice" means performance of any of the following activities: detection; apprehension; detention; pretrial release; post-trial release; prosecution; adjudication; correctional supervision; or rehabilitation of accused persons or criminal offenders; and includes criminal identification activities and the collection, storage, and dissemination of criminal history record information; but does not include crime prevention activities or criminal defense functions;

(6) "Disposition" means information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings and also disclosing the nature of the termination of the proceedings, or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement, and shall include but is not limited to acquittal, acquittal by reason of insanity, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, nolo contendere plea, convicted, youthful offender determination or transfer to juvenile jurisdiction, deceased, deferred disposition, dismissed–civil action, found insane or mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial–defendant discharged, executive clemency, placed on probation, paroled, released from correctional supervision, or fugitive from justice;

(7) "Complete" refers to the fact that criminal history record information should show all dispositions as the case moves through the various segments of the criminal justice system;

(8) "Accurate" refers to the fact that criminal history record information contains no erroneous information of a material nature; and

(9) "Nonconviction data" means arrest information without a disposition if an interval of one year has elapsed from the date of arrest and no active prosecution of the charge is pending; or information disclosing that the police have elected not to refer a matter to a prosecutor, or that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed, as well as all acquittals and all dismissals; and

(10) "Data center" means the State agency responsible for the collection, storage, dissemination, and analysis of all pertinent criminal history record information and related functions, including but not limited to, providing technical assistance in the development of information systems and conducting appropriate research and statistical studies. [L 1979, c 129, pt of §2]

Purpose. See L 1979, c 129, §1.

Mandate to counties; severability. L 1979, c 129, §3 provides: "Any provision of this Act which is held to be a legislative mandate to the counties pursuant to Article VIII, section 5, of the Hawaii State Constitution shall be invalid. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable."

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§846-2 Establishment of the data center. There shall be a data center which shall be attached to the judiciary for administrative purposes until July 1, 1981, at which time the data center shall be attached to the department of the attorney general for administrative purposes. The data center shall be directed and managed by an interim director to be appointed by the governor until July 1, 1981, and thereafter, by a director appointed by the attorney general. There shall also be a committee, appointed by the attorney general, composed of selected criminal justice user-agency personnel, to act in an advisory capacity to the data center in matters related to interagency coordination and user needs. [L 1979, c 129, pt of §2; am L 1980, c 269, §2]

Amendment Note

L 1980 amended section generally.

[§846-2.5] Purpose of the criminal justice information data center. (a) The Hawaii criminal justice information data center, hereinafter referred to as the "data center", shall be responsible for the collection, storage, dissemination, and analysis of all pertinent criminal history record information from all criminal justice agencies and to provide for the collection, storage, and dissemination of criminal history record information by criminal justice agencies in such a manner as to balance the right of the public and press to be informed, the right of privacy of individual citizens, and the necessity for law enforcement agencies to utilize the tools needed to prevent crimes and detect criminals in support of the right of the public to be free from crime and the fear of crime.

(b) In order to accomplish this purpose, the data center shall publish periodic reports which shall provide the public with a clear view of the criminal justice systems. [L 1980, c 269, §1]

[§846-3] Reporting to data center. The chiefs of the police of the counties of the State and agencies of state and county governments having power of arrest shall furnish the data center with descriptions of all such persons who are arrested by them for any felony or misdemeanor, or as fugitives from the criminal justice system of another jurisdiction, or for any offense declared by rule or regulation promulgated by the attorney general to be a significant offense necessary to be reported for the proper administration of criminal justice. The data center shall in all appropriate cases forward necessary identifying data and other information to the system maintained by the Federal Bureau of Investigation. [L 1979, c 129, pt of §2]

[§846-4] Query of data center. Criminal justice agencies shall query the data center to assure that the most up-to-date disposition data is being used. Such inquiries shall be made prior to any dissemination except in those cases where the agency determines that time is of the essence and the center is technically incapable of responding within the necessary time period, provided, however, that where local criminal justice agencies have entered into agreements for the sharing of a computerized criminal history record information system, the agency operating such system shall not be required to query the data center prior to disseminating information to the agencies which are party to the agreements. [L 1979, c 129, pt of §2]

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[§846-5] Reporting of dispositions. It shall be the responsibility of every criminal justice agency in this State to report to the data center the disposition of cases which enter their area in the administration of criminal justice to insure that all systems maintained in this State shall contain complete and accurate criminal history record information. All dispositions shall be reported as promptly as feasible but not later than ninety days after the happening of an event which constitutes a disposition. [L 1979, c 129, pt of §2]

[§846-6] Systematic audit. All criminal justice agencies shall institute a process of data collection, entry, storage, and systematic audit of criminal history record information that will minimize the possibility of recording and storing inaccurate information. Any criminal justice agency which finds that it has reported inaccurate information of a material nature shall forthwith notify all criminal justice agencies known to have received such information. All criminal justice agencies shall:

(1) Maintain for a minimum period of one year a listing of the individuals or agencies both in and outside of the State to which criminal history record information was released, a record of what information was released, and the date such information was released;
(2) Establish a delinquent disposition monitoring system; and
(3) Verify all record entries for accuracy and completeness. [L 1979, c 129, pt of §2]

[§846-7] Security. Wherever criminal history record information is collected, stored, or disseminated, the criminal justice agency or agencies responsible for the operation of the system shall:

(1) Have power to determine for legitimate security purposes which personnel can be permitted to work in a defined area where such information is stored, collected, or disseminated;
(2) Select and supervise all personnel authorized to have direct access to such information;
(3) Assure that an individual or agency authorized direct access is administratively held responsible for the physical security of criminal history record information under its control or in its custody and the protection of such information from unauthorized access, disclosure, or dissemination;
(4) Institute procedures to reasonably protect any data center of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or man-made disasters;
(5) Provide that each employee working with or having access to criminal history record information is to be made familiar with the substance and intent of this chapter and of regulations promulgated thereunder; and
(6) Require that direct access to criminal history record information is to be available only to authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel essential to the proper operation of the criminal history record information system.

Where a noncriminal justice agency operates a system, the participating criminal justice agency shall be responsible for review, approval, and monitoring of procedures developed to assure compliance with this section. [L 1979, c 129, pt of §2]

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[§846-8] Exclusions. This chapter shall not apply to criminal history record information contained in:

(1) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;

(2) Original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public if such records are organized on a chronological basis;

(3) Court records of public judicial proceedings;

(4) Published court or administrative opinions or public judicial, administrative, or legislative proceedings;

(5) Records of traffic offenses maintained for the purpose of regulating the issuance, suspension, revocation, or renewal of driver's, pilot's, or other operators' license;

(6) Announcements of executive clemency or pardon, by the Hawaii paroling authority or the governor of the State.

Nothing in this chapter shall prevent a criminal justice agency from disclosing, to the public, criminal history record information related to the offense for which an individual is currently within the criminal justice system, including his place of incarceration; and, nothing in this chapter shall prevent a criminal justice agency from confirming prior criminal history record information to members of the news media or any other person, upon specific inquiry as to whether a named individual was arrested, detained, indicted, or other formal charge was filed, on a specific date, if the arrest record information or criminal history record information disclosed is based on data excluded by the first paragraph of this section. Nothing in this chapter prohibits the dissemination of criminal history record information for purposes of international travel, such as issuing visas and granting of citizenship. [L 1979, c 129, pt of §2]

[§846-9] Limitations on dissemination. Dissemination of nonconviction data shall be limited, whether directly or through any intermediary, only to:

(1) Criminal justice agencies, for purposes of the administration of criminal justice and criminal justice agency employment;

(2) Individuals and agencies specified in section 846-10;

(3) Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement, provided that such agreement shall specifically authorize access to data, limit the use of data to purposes for which given, and insure the security and confidentiality of the data consistent with the provisions of this chapter;

(4) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency; provided that such agreement shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and insure the confidentiality and security of the data consistent with the purposes of this chapter;

(5) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court rule, decision, or order, as construed by appropriate state or local officials or agencies; and

(6) Agencies of state or federal government which are authorized by statute or executive order to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information.

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These dissemination limitations do not apply to conviction data.

Criminal history record information disseminated to non-criminal justice agencies shall be used only for the purposes for which it was given.

No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself. [L 1979, c 129, pt of §2]

[§846-10] Dissemination. Criminal history record information may be disseminated to:

(1) The governor in individual cases or situations wherein he elects to become actively involved in the investigation of criminal activity or the administration of criminal justice in accordance with his constitutional duty to insure that the laws be faithfully executed;

(2) The attorney general in connection with his statutory authority and duties in the administration and enforcement of the criminal laws and for the purpose of administering and insuring compliance with the provisions of this chapter;

(3) To such other individuals and agencies who are provided for in this chapter or by rule or regulation. [L 1979, c 129, pt of §2]

[§846-11] Office of correctional information and statistics. The data center shall coordinate its activities with the records system of the intake service centers of the office of correctional information and statistics. Criminal history record information shall be provided from this office to the data center and the functions of each shall be coordinated so that there will be no overlap, or duplication of efforts. [L 1979, c 129, pt of §2]

[§846-12] Juvenile records. Dissemination and disposition of records concerning proceedings relating to the adjudication of a juvenile as a delinquent or in need of supervision (or the equivalent) in family court to non-criminal justice agencies is prohibited, unless a statute, court order, rule, or decision, or federal executive order specifically authorizes such dissemination, except that juvenile records may be disseminated to individuals and agencies set forth in paragraphs (3) and (4) of section 846-9. Juvenile records disseminated to non-criminal justice agencies shall be used only for the purposes for which they were given and may not be disseminated further. [L 1979, c 129, pt of §2]

[§846-13] Annual audits. The attorney general shall conduct annual audits of a representative sample of criminal justice agencies which may be chosen on a random basis, to verify the accuracy and completeness of criminal history record information maintained by such agencies, and to determine adherence with this chapter and regulations promulgated thereunder. Criminal justice agencies shall retain appropriate records to facilitate the annual audits. Audit of the data center shall be performed by another state agency. [L 1979, c 129, pt of §2]

[§846-14] Access and review. Any individual who asserts that he has reason to believe that criminal history record information relating to him is maintained by any information system in this State shall be entitled to review such information for the purpose of determining its accuracy and completeness by making application to the agency operating such system. The applicant shall provide satisfactory identification which shall be positively verified by fingerprints. Rules and regulations promulgated under this section shall include provisions for administrative review and necessary correction of any claim by the

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individual to whom the information relates that the information is inaccurate or incomplete; provisions for administrative appeal where a criminal justice agency refuses to correct challenged information to the satisfaction of the individual to whom the information relates; provisions for supplying to an individual whose record has been corrected, upon his request, the names of all non-criminal justice agencies to which the data have been given; and provisions requiring the correcting agency to notify all criminal justice recipients of corrected information. The review authorized by this section shall be limited to a review of criminal history record information. [L 1979, c 129, pt of §2]

[§846-15] Rules and regulations. The attorney general shall adopt rules and regulations, as may be necessary, which will insure compliance with the provisions of this chapter by the most efficient and effective means possible. [L 1979, c 129, pt of §2]

[§846-16] Violations. Any person who knowingly permits unauthorized access to criminal history record information, or who knowingly disseminates criminal history record information in violation of the provisions of this chapter, or any person violating any agreement authorized by paragraphs (3) and (4) of section 846-9, or any person who gains unauthorized access to criminal history record information shall be guilty of a misdemeanor. [L 1979, c 129, pt of §2]

* * * * *

[CHAPTER 853]
CRIMINAL PROCEDURE: DEFERRED ACCEPTANCE OF GUILTY PLEA

SECTION

853-1 DEFERRED ACCEPTANCE OF GUILTY PLEA, DISCHARGE AND DISMISSAL, EXPUNGEMENT OF RECORDS
853-4 CHAPTER NOT APPLICABLE; WHEN

§853-1 Deferred acceptance of guilty plea, discharge and dismissal, expungement of records. (a) Upon proper motion as provided by this chapter:

(1) When a defendant voluntarily pleads guilty, prior to commencement of trial, to a felony or misdemeanor or petty misdemeanor;

(2) It appears to the court that the defendant is not likely again to engage in a criminal course of conduct; and

(3) The ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law,

the court, without entering a judgment of guilt and with the consent of the defendant and after considering the recommendations, if any, of the prosecutor, may defer further proceeding.

(b) The proceedings may be deferred upon any of the conditions specified by section 706-624. The court may defer the proceedings for such period of time as the court shall direct but in no case to exceed the maximum sentence allowable. The defendant may be subject to bail or recognizance at the court's discretion during the period during which the proceedings are deferred.

(c) Upon his completion of the period designated by the court and in compliance with the terms and conditions established, the court shall discharge the defendant and dismiss the charge against him.

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(d) Discharge of the defendant and dismissal of the charge against him under this section shall be without adjudication of guilt, shall eliminate any civil admission of guilt, and is not a conviction.

(e) Upon discharge of the defendant and dismissal of the charge against him under this section, the defendant may apply for expungement not less than one year following discharge, pursuant to section 831-3.2. [L 1976, c 154, pt of §2; am L 1979, c 147, §1 and c 155, §1; am L 1980, c 232, §42]

Retroactive relief. L 1979, c 155, §3, provides that "all misdemeanor records preserved at any police department pursuant to section 853-1(e) [as it existed prior to amendment by L 1979, c 155, §1]...shall be transmitted to the office of the attorney general and shall be expunged pursuant to the provisions of section 831-3.2..."

Amendment Note

L 1979–C 147 amended subsection (a)(1) by adding "prior to commencement of trial". C 155 amended subsection (e).

L 1980 added subsections (b) to (d).

Case Notes

Cases decided under prior program.

Denial of motion for DAGP is within discretion of trial court. 59 H. 562, 584 P.2d 126.

Procedure (under earlier program) does not impose an impermissible burden on exercise of right of trial by jury. 58 H. 304, 568 P.2d 1194.

Under procedures established before enactment of this section, it was held that a motion for DAG plea was not seasonably made after a plea of not guilty and a trial resulting in a finding of guilt. 58 H. 412, 570 P.2d 1323.

§853-4 Chapter not applicable; when. This chapter shall not apply when:

(1) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;

(2) The offense charged involves the intentional, knowing, or reckless bodily injury or serious bodily injury of another person;

(3) The offense charged involves a conspiracy or solicitation to intentionally, knowingly, or recklessly kill another person or to cause serious bodily injury to another person;

(4) The offense charged is a class A felony;

(5) The offense charged is nonprobationable;

(6) The defendant has been convicted of any offense defined as a felony by the Hawaii Penal Code or has been convicted for any conduct which if perpetrated in this State would be punishable as a felony;

(7) The defendant is found to be a law violator or delinquent child for the commission of any offense defined as a felony by the Hawaii Penal Code or for any conduct which if perpetrated in this State would constitute a felony;

(8) The defendant has a prior conviction for a felony committed in any state, federal, or foreign jurisdiction;

(9) A firearm was used in the commission of the offense charged;

(10) The defendant is charged with the distribution of a dangerous, harmful, or detrimental drug to a minor;

(11) The defendant has been charged with a felony offense and has been previously granted deferred acceptance of guilty plea status for a prior offense, whether or not the period of deferral has already expired;

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(12) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea status for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired;

(13) The offense charged is:

(A) Escape in the first degree;
(B) Escape in the second degree;
(C) Promoting prison contraband in the first degree;
(D) Promoting prison contraband in the second degree;
(E) Bail jumping in the first degree;
(F) Bail jumping in the second degree;
(G) Bribery;
(H) Bribery of a witness;
(I) Intimidating a witness;
(J) Bribery of or by a juror;
(K) Intimidating a juror;
(L) Jury tampering.

The court may by rule adopt other criteria in this area. [L 1976, c 154, pt of §2; am L 1980, c 292, §2]

[§853-2] Plea of guilty; procedure. Upon motion made before sentence by the defendant, the prosecutor, or on its own motion, the court will either proceed in accordance with section 853-1, or deny the motion and accept the defendant's plea of guilty, or allow the defendant to withdraw his plea of guilty only for good cause. [L 1976, c 154, pt of §2]

[§853-3] Violation of terms and conditions during deferment; result. Upon violation of a term or condition set by the court for a deferred acceptance of guilty plea, the court may enter an adjudication of guilt and proceed as otherwise provided. [L 1976, c 154, pt of §2]

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	19-4812			X
2. Privacy and Security Council				
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	19-4812			X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	19-4812			X
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3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only	19-4812			X
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy				
5. Right to Challenge				
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information	19-4813	X		
8. Purging Conviction Information				

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information				
11. Removal of Disqualifications	19-2604			X
12. Right to State Non-Existence of Record				
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	19-4813	X		
14.2 Auditing Requirements				
14.3 Other Accuracy/Completeness Requirements	19-4812			X
15. Dedication				
16. Civil Remedies				
17. Criminal Penalties				
18. Public Records	9-301 59-1009	X		X
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security				
22.1 Physical (Building) Security				
22.2 Administrative Security				
22.3 Computer Security				
23. Transaction Logs				
24. Training Employees	19-4812			X
25. Listing of Information Systems				
26. FOIA (Including CJI)	9-301	X		
27. FOIA (Excluding CJI)				
28. Central State Repository	19-4812			X

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Idaho Code

19-2604. Discharge of defendant — Amendment of judgment. — 1. If sentence has been imposed but suspended, or if sentence has been withheld, upon application of the defendant and upon satisfactory showing that the defendant has at all times complied with the terms and conditions upon which he was placed on probation, the court may, if convinced by the showing made that there is no longer cause for continuing the period of probation, and if it be compatible with the public interest, terminate the sentence or set aside the plea of guilty or conviction of the defendant, and finally dismiss the case and discharge the defendant; and this shall apply to the cases in which defendants have been convicted and granted probation by the court before this law goes into effect, as well as to cases which arise thereafter. The final dismissal of the case as herein provided shall have the effect of restoring the defendant to his civil rights.

2. If sentence has been imposed but suspended during the first one hundred and twenty (120) days of a sentence to the custody of the state board of correction, and the defendant placed upon probation as provided in 4 of section 19-2601, Idaho Code, upon application of the defendant, the prosecuting attorney, or upon the court's own motion, and upon satisfactory showing that the defendant has at all times complied with the terms and conditions of his probation, the court may amend the judgment of conviction from a term in the custody of the state board of correction to "confinement in a penal facility" for the number of days served prior to suspension, and the amended judgment may be deemed to be a misdemeanor conviction. [1915, ch. 104, part of § 1, p. 245; reen. C.L., § 8002; am. 1919, ch. 134, § 2, p. 429; C.S., § 9046; I.C.A., § 19-2506; am. 1951, ch. 99, § 1, p. 224; am. 1970, ch. 143, § 4, p. 425; am. 1971, ch. 97, § 2, p. 210.]

Compiler's notes. Sections 2 and 5 of S.L. 1970, ch. 143 are compiled as §§ 19-2514 and 20-101, respectively, and § 3 was repealed.

Section 1 of S.L. 1971, ch. 97 was repealed.

Cited in: State v. Bock, 80 Idaho 296, 328 P.2d 1065 (1958); Franklin v. State, 87 Idaho 291, 392 P.2d 552 (1964); State v. Edelblute, 91 Idaho 469, 424 P.2d 739 (1967).

ANALYSIS

Conditions of withheld judgment.
Conviction.
Effect of withheld judgment.
Persistent violators.
Probation.

Conditions of Withheld Judgment.

Under this section, until the conditions of a withheld judgment have been satisfied, a defendant subject to those conditions by way of his guilty plea or verdict of guilty is a convicted felon. United States v. Locke, 409 F. Supp. 600 (D. Idaho), aff'd, 542 F.2d 800 (9th Cir. 1976).

Where defendant, who had pleaded guilty to charge of burglary and had been placed on probation, received and possessed firearms after the period of probation, but where defendant had not applied to have guilty plea set aside, defendant was a convicted felon and subject to punishment for violating federal statute proscribing convicted felon from possessing or receiving firearm in commerce. United States v. Locke, 409 F. Supp. 600 (D. Idaho), aff'd, 542 F.2d 800 (9th Cir. 1976).

Conviction.

Where defendant, who had pleaded guilty to charge of burglary and had been placed on probation, received and possessed firearms during the period of probation, defendant was a "convicted felon," since defendant had not as of the dates of possession and receipt fulfilled the conditions imposed upon him by the trial which withheld judgment in the burglary prosecution. United States v. Locke,

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409 F. Supp. 600 (D. Idaho), aff'd, 542 F.2d 800 (9th Cir. 1976).

Effect of Withheld Judgment.

Where defendant, who had pleaded guilty to charge of burglary and had been placed on probation, received and possessed firearms during the period of probation, defendant was subject to punishment for violating federal statute proscribing convicted felon from possessing or receiving firearm in commerce, even though judgment in the burglary case was withheld. United States v. Locke, 409 F. Supp. 600 (D. Idaho), aff'd, 542 F.2d 800 (9th Cir. 1976).

In a prosecution for violating federal statute proscribing convicted felon from possessing or receiving firearm in commerce, it was no defense that defendant, who had pleaded guilty to charge of burglary in state court and had been placed on probation, was advised by a public defender that he was not a convicted felon because he had received a withheld judgment in the burglary case. United States v. Locke, 409 F. Supp. 600 (D. Idaho), aff'd, 542 F.2d 800 (9th Cir. 1976).

Persistent Violators.

This section is not intended to apply to habitual criminals or to a class of persons who indicate by their persistency in the commission of crime that nothing short of actual restraint will deter them from committing other offenses. In re France, 38 Idaho 627, 224 P. 433 (1924).

Probation.

Where maximum sentence for conviction for drawing a check without funds was six months at the time the crime was committed, judgment placing defendant on probation for two years was excessive, but judgment of probation was valid for period of six months. State v. Eikelberger, 71 Idaho 282, 230 P.2d 696 (1951).

* * * * *

CHAPTER 48

IDAHO STATE POLICE

SECTION.

19-4812. Criminal identification, records and statistics.

19-4812. Criminal identification, records and statistics. — (1) Definitions as used in this section and section 19-4813, Idaho Code:

(a) "Bureau" means the criminal identification, records and communications bureau in the department of law enforcement of the state of Idaho.

(b) "Law enforcement agency" means a governmental unit of one or more persons employed full time by the state or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(c) "Offense" means an act which is a felony, a misdemeanor or a petty misdemeanor.

(2) The bureau shall:

(a) Obtain and file fingerprints, descriptions, photographs and any other available identifying data on persons who have been arrested or taken into custody in this state:

1. for an offense which is a felony;

2. for an offense which is a misdemeanor or petty misdemeanor involving burglary tools, commercial gambling, dealing in gambling

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devices, contributing to the delinquency of a child, dealing in stolen property, controlled substances, firearms, dangerous weapons, explosives, pandering, prostitution, sex offenses where children are victims, or worthless checks;

3. for an offense charged as disorderly conduct but which relates to an act connected with one or more of the offenses under subdivision 2;

4. as a fugitive from justice;

5. for any other offense designated by the director of the bureau.

(b) Accept for filing fingerprints and other identifying data, taken at the discretion of the law enforcement agency involved, on persons arrested or taken into custody for offenses other than those listed in paragraph (a).

(c) Obtain and file fingerprints and other available identifying data on unidentified human corpses found in this state.

(d) Obtain and file information relating to identifiable stolen or lost property.

(e) Obtain and file a copy or detailed description of each arrest warrant issued in this state in which the law enforcement agency desires the return of the person described in said warrant but which is not served because the whereabouts of the person named on the warrant is unknown or because that person has left the state. All available identifying data shall be obtained with the copy of the warrant, including any information indicating that the person named on the warrant may be armed, dangerous or possessed of suicidal tendencies.

(f) Collect information concerning the number and nature of all offenses designated by the director of the bureau, including, but not limited to, Part I and Part II offenses as defined by the federal bureau of investigation under its system of uniform crime reports for the United States which are known to have been committed in this state, the legal action taken in connection with such offenses from the inception of the complaint to the final discharge of the defendant and such other information as may be useful in the study of crime and the administration of justice. The director of the bureau may determine any other information to be obtained regarding crime statistics. However, the information shall include such data as may be requested by the federal bureau of investigation under its system of uniform crime reports for the United States.

(g) Furnish all reporting officials with forms and instructions which specify in detail the nature of the information required under paragraphs (a) to (f), inclusive, the time it is to be forwarded, the method of classifying and such other matters as shall facilitate collection and compilation.

(h) Cooperate with and assist all law enforcement agencies in the state in the establishment of a state system of criminal identification and in obtaining fingerprints and other identifying data on all persons described in paragraphs (a), (b) and (c).

(i) Offer assistance and, when practicable, instructions to all local law enforcement agencies in establishing efficient local bureaus of identification and records systems.

(j) Compare the fingerprints and descriptions that are received from law enforcement agencies with the fingerprints and the descriptions already

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on file and, if the person arrested or taken into custody is a fugitive from justice or has a criminal record, immediately notify the law enforcement agencies concerned and supply copies of the criminal records to these agencies.

(k) Make available all statistical information obtained to the governor and the legislature.

(*l*) Prepare and publish reports and releases at least once a year and no later than July 1, containing the statistical information gathered under this section and presenting an accurate picture of crime in this state and of the operation of the agencies of criminal justice.

(m) Make available upon request, to all local and state law enforcement agencies in this state, to all federal law enforcement and criminal identification agencies, and to state law enforcement and criminal identification agencies in other states, any information in the files of the bureau which aid these agencies in the performance of their official duties. For this purpose the bureau shall operate on a twenty-four (24) hour a day basis, seven (7) days a week. Such information may also be made available to any other agency of this state or political subdivision thereof, and to any other federal agency as authorized, and upon assurance by the agency concerned that the information is to be used for official purposes only.

(n) Cooperate with other agencies of this state, the criminal justice agencies of other states, and the uniform crime reports and the national crime information center systems of the federal bureau of investigation in developing and conducting an interstate, national and international system of criminal identification, records and statistics.

(o) Permit any individual upon completion of satisfactory fingerprint identification to review all criminal history record information pertaining to that individual contained within the files of the criminal identification bureau. [I.C., § 19-4812, as added by 1972, ch. 238, § 1, p. 621; am. 1974, ch. 27, § 8, p. 811; am. 1979, ch. 204, § 1, p. 585.]

* * * * *

59-1009. **Official records open to inspection.** — The public records and other matters in the office of any officer are, at all times during office hours, open to the inspection of any citizen of this state. [R.S., § 454; am. R.C., § 341; reen. C.L., § 341; C.S., § 479; I.C.A., § 57-1009.]

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	38-206-2 127-55a	X		X
2. Privacy and Security Council				
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	38-206-7			X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	38-206-7			X
3.12 Authorizes to Private Sector				
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector	38-206-7			X
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	38-206-7			X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	38-206-7			X
3.22 Authorizes to Private Sector				
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector	38-206-7			X
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	38-206-7			X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	38-206-7			X
3.32 Authorizes to Private Sector				
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector	38-206-7			X
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	38-206-7			X
5. Right to Challenge	38-206-7			X
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information	127-55a 38-206-5	X		X
8. Purging Conviction Information				

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information				
11. Removal of Disqualifications				
12. Right to State Non-Existence of Record				
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	38-206-2.1	X		
14.2 Auditing Requirements				
14.3 Other Accuracy/Completeness Requirements				
15. Dedication				
16. Civil Remedies				
17. Criminal Penalties	38-206-7	X		
18. Public Records	116-43.4	X		
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security				
22.1 Physical (Building) Security				
22.2 Administrative Security				
22.3 Computer Security				
23. Transaction Logs				
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)				
27. FOIA (Excluding CJI)				
28. Central State Repository	38-206 127-55a	X		X

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Illinois Annotated Statutes
Chapter 38

206–7. Records not to be public

§ 7. No file or record of the Department hereby created shall be made public, except as may be necessary in the identification of persons suspected or accused of crime and in their trial for offenses committed after having been imprisoned for a prior offense; and no information of any character relating to its records shall be given or furnished by said Department to any person, bureau or institution other than as provided in this Act or other State law, or when a governmental unit is required by state or federal law to consider such information in the performance of its duties. Violation of this Section shall constitute a Class A misdemeanor.

However, if an individual requests the Department to release information as to the existence or nonexistence of any criminal record he might have, the Department shall do so upon determining that the person for whom the record is to be released is actually the person making the request. The Department shall establish rules to set forth procedures to allow an individual to review any criminal history record information the Department may hold concerning that individual upon verification of the identity of the individual. Such rulemaking is subject to the provisions of the Illinois Administrative Procedure Act.[1]

Amended by P.A. 81–293, § 1, eff. Jan. 1, 1980.

[1] Chapter 127, ¶ 1001 et seq.

* * * * *

Chapter 127

The Department of Law Enforcement and the Department of Corrections

55a. Powers and duties of Department of Law Enforcement

§ 55a. The Department of Law Enforcement shall have the following powers and duties, and those set forth in Sections 55a–1 through 55a–6:

1. To exercise the rights, powers and duties which have been vested in the Department of Public Safety by "An Act in relation to the State police", approved July 20, 1949, as amended; [1]

2. To exercise the rights, powers and duties which have been vested in the Department of Public Safety by "An Act in relation to the establishment and operation of radio broadcasting stations and the acquisition and installation of radio receiving sets for police purposes," approved July 7, 1931, as amended; [2]

3. To exercise the rights, powers and duties which have been vested in the Department of Public Safety by "An Act in relation to criminal identification and investigation," approved July 2, 1931; [3]

4. To (a) investigate the origins, activities, personnel and incidents of crime and the ways and means to redress the victims of crimes, and study the impact, if any, of legislation relative to the effusion of crime and growing crime rates, and enforce the criminal laws of this State related thereto, (b) enforce all laws regulating the production, sale, prescribing, manufacturing, administering, transporting, having in possession, dispensing, delivering, distributing, or use of controlled substances and cannabis, (c) employ skilled experts, scientists, technicians, investigators or otherwise specially qualified persons to aid in preventing or detecting crime, apprehending criminals, or preparing and presenting evidence of violations of the criminal laws of

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the State, (d) cooperate with the police of cities, villages and incorporated towns, and with the police officers of any county, in enforcing the laws of the State and in making arrests and recovering property, (e) apprehend and deliver up any person charged in this State or any other State of the United States with treason, felony, or other crime, who has fled from justice and is found in this State, and (f) conduct such other investigations as may be provided by law. Persons exercising these powers within the Department are conservators of the peace and as such have all the powers possessed by policemen in cities and sheriffs, except that they may exercise such powers anywhere in the State in cooperation with and after contact with the local law enforcement officials.

5. To (a) be a central repository and custodian of criminal statistics for the State, (b) procure and file for record photographs, plates, outline pictures, measurements, descriptions of all persons who have been arrested on a charge of violation of a penal statute of this State, (c) procure and file for record such information as is necessary and helpful to plan programs of crime prevention, law enforcement and criminal justice, (d) procure and file for record such copies of fingerprints, as may be required by law, of all persons arrested on charges of violating any penal statute of the State, (e) establish general and field crime laboratories, (f) register and file for record such information as may be required by law for the issuance of firearm owner's identification cards, (h) employ polygraph operators, laboratory technicians and other specially qualified persons to aid in the identification of criminal activity, and (i) undertake such other identification, information, laboratory, statistical or registration activities as may be required by law.

Photographs, fingerprints or other records of identification so taken shall, upon the acquittal of a person charged with the crime or upon his being released without being convicted, be returned to him, except that nothing herein shall prevent the Department of Law Enforcement from maintaining all records of any person who is admitted to probation upon terms and conditions and who fulfills those terms and conditions pursuant to Section 410 of the "Illinois Controlled Substances Act", enacted by the 77th General Assembly; [4]

6. To (a) acquire and operate one or more radio broadcasting stations in the State to be used for police purposes, (b) operate a statewide communications network to gather and disseminate information for law enforcement agencies, (c) operate an electronic data processing and computer center for the storage and retrieval of data pertaining to criminal activity, (d) undertake such other communication activities as may be required by law.

7. To provide, as may be required by law, assistance to local law enforcement agencies through (a) training, management and consultant services for local law enforcement agencies, and (b) the pursuit of research and the publication of studies pertaining to local law enforcement activities.

8. To exercise the rights, powers and duties which have been vested in the Department of Law Enforcement and Director of the Department of Law Enforcement by "An Act in relation to control and regulation of controlled substances, and to make an appropriation therefor", approved July 5, 1957; [5]

9. To exercise the rights, powers and duties which have been vested in the Department of Public Safety by "An Act in relation to the regulation of traffic", approved July 9, 1935, as amended; [6]

10. To exercise the rights, powers and duties which have been vested in the Department of Public Safety by "An Act relating to the acquisition, possession and transfer of firearms and firearm ammunition, to provide a penalty for the violation thereof, and to make an appropriation in connection therewith", approved August 3, 1967; [7]

11. To enforce and administer such other laws in relation to law enforcement as may be vested in the Department;

12. To transfer jurisdiction of any realty title to which is held by the State of Illinois under the control of the Department to any other Department of the State Government or to the State Employees Housing Commission, or to acquire or accept Federal land, when such transfer, acquisition or acceptance is advantageous to the State and is approved in writing by the Governor;

13. With the written approval of the Governor, to enter into agreements with other departments created by this Act, for the furlough of inmates of the penitentiary to such other departments for their use in research programs being conducted by them.

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For the purpose of participating in such research projects, the Department may extend the limits of any inmate's place of confinement, when there is reasonable cause to believe that the inmate will honor his or her trust by authorizing the inmate, under prescribed conditions, to leave the confines of the place unaccompanied by a custodial agent of the Department. The Department shall make rules governing the transfer of the inmate to the requesting other department having the approved research project, and the return of such inmate to the unextended confines of the penitentiary. Such transfer shall be made only with the consent of the inmate.

The willful failure of a prisoner to remain within the extended limits of his or her confinement or to return within the time or manner prescribed to the place of confinement designated by the Department in granting such extension shall be deemed an escape from custody of the Department and punishable as provided in Section 17 of "An Act in relation to the Illinois State Penitentiary", approved June 30, 1933, as now or hereafter amended.[8]

14. To provide investigative services, with all of the powers possessed by policemen in cities and sheriffs, in and around all race tracks subject to the Horse Racing Act of 1975.[9]

15. To expend such sums as the Director deems necessary from Contractual Services appropriations for the Division of Criminal Investigation for the purchase of evidence and for the employment of persons to obtain evidence. Such sums shall be advanced to agents authorized by the Director to expend funds, on vouchers signed by the Director.

16. To conduct arson investigations.

17. To develop a separate statewide statistical police contact record keeping system for the study of juvenile delinquency. The records of this police contact system shall be limited to statistical information. No individually identifiable information shall be maintained in the police contact statistical record system.

To develop a separate statewide central adjudicatory and dispositional records system for persons under 19 years of age who have been adjudicated delinquent minors and to make information available to local registered participating police youth officers so that police youth officers will be able to obtain rapid access to the juvenile's background from other jurisdictions to the end that the police youth officers can make appropriate dispositions which will best serve the interest of the child and the community. Information maintained in the adjudicatory and dispositional record system shall be limited to the incidents or offenses for which the minor was adjudicated delinquent by a court, and a copy of the court's dispositional order. All individually identifiable records in the adjudicatory and dispositional records system shall be destroyed when the person reaches 19 years of age.

To develop rules which guarantee the confidentiality of such individually identifiable adjudicatory and dispositional records except when used for the following:

1. by authorized juvenile court personnel or the state's attorney in connection with proceedings under the Juvenile Court Act; [10] or

2. inquiries from registered police youth officers.

To develop administrative rules and administrative hearing procedures which allow a minor, his attorney, his parents or guardian access to individually identifiable adjudicatory and dispositional records for the purpose of determining or challenging the accuracy of the records. Final administrative decisions shall be subject to the provisions of the Administrative Review Act.[11]

For the purposes of this Act "police youth officer" means a member of a duly organized State, county or municipal police force who is assigned by his Superintendent, Sheriff or chief of police, as the case may be, to specialize in youth problems.

Amended by P.A. 76-428, § 1, eff. Jan. 1, 1970; P.A. 76-525, § 1, eff. Jan. 1, 1970; P.A. 76-1002, § 1, eff. Aug. 26, 1969; P.A. 76-2286, § 1, eff. July 1, 1970; P.A. 77-571, § 1, eff. July 31, 1971; P.A. 77-769, § 1, eff. Aug. 16, 1971; P.A. 77-2022, § 1, eff. July 11, 1972; P.A. 78-255, § 61, eff. Oct. 1, 1973; P.A. 80-56, § 9, eff. July 1, 1977; P.A. 80-147, § 9, eff. July 21, 1977; P.A. 80-1300, § 1, eff. Aug. 2, 1978; P.A. 80-1305, § 3, eff. Jan. 1, 1979; P.A. 80-1364, § 61, eff. Aug. 13, 1978; P.A. 80-1494, § 11, eff. Jan. 8, 1979.

[1] Chapter 121, ¶ 307.1 et seq.
[2] Chapter 121, ¶ 307.21 et seq.
[3] Chapter 38, ¶ 206-1 et seq.
[4] Chapter 56½, ¶ 1410.
[5] Chapter 23, ¶ 3501 et seq.
[6] Chapter 95½, ¶ 98 et seq. (repealed).
[7] Chapter 38, ¶ 83-1 et seq.
[8] Chapter 108, ¶¶ 105 to 122 (repealed).
[9] Chapter 8, ¶ 37-1 et seq.
[10] Chapter 37, ¶ 701-1 et seq.
[11] Chapter 110, ¶ 264 et seq.

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P.A. 76–2286 consolidated the changes made by the multiple 1969 amendments.

P.A. 77–571 changed the citation from "An Act in relation to State highway police and to repeal an Act herein named" to "An Act in relation to the State police" in subd. 2.

P.A. 77–769 deleted "traffic-in, giving away" and "furnishing" and added "dispensing delivering, distributing" from list of types of laws in subd. 5(b) and substituted "controlled substances and cannabis" for "narcotic drugs in subd. 5(b); added the exception in the second paragraph of subd. 6; substituted "Department of Law Enforcement and the Director of the Department of Law Enforcement" for "Division of Narcotic Control and the Superintendent of Narcotic Control" in subd. 9; and substituted "controlled substances" for "narcotic and dangerous drugs" in the title of the act cited in subd. 9.

P.A. 77–769, approved Aug. 16, 1971, provided in section 2:

"This amendatory Act takes effect July 1, 1971."

P.A. 77–2022, which incorporated the amendments made by P.A. 77–571 and P.A. 77–769, added subd. 16.

P.A. 80–1300, approved Aug. 2, 1978, provided in section 2:

"This Act takes effect July 1, 1978 or upon becoming a law, whichever is later."

Section 2 of P.A. 77–2022 provided:

"This amendatory Act of 1972 takes effect July 1, 1972, or upon its becoming a law whichever is later."

An amendment of this section by P.A. 77–2829, § 62, was excised from that Act under the terms of section 67, thereof. See note under ch. 23, ¶¶ 2804 to 2807.

The 1973 Revisory Act, P.A. 78–255, stated in section 61 that in each of the sections enumerated therein, amended by two or more Public Acts of the 77th General Assembly, the latest Public Act was based on and incorporated all prior amendments to that Section made by earlier Public Acts of the 77th General Assembly.

For abolition of certain bureaus and continuation of actions by P.A. 80–56, see notes under ch. 8, ¶¶ 37–28, 37–34.

P.A. 80–147 deleted par. 1 relating to the exercise of rights, powers and duties which had been vested in Department of Public Safety as successor to the State Fire Marshal; redesignated subsequent paragraphs; in the present par. 5, inserted "(i)" and deleted former (i) which provided for keeping record of fires; deleted former par. 10 relating to exercise of rights, powers and duties vested in Department of Public Safety by the Boiler Safety Act; substituted "Horse Racing Act of 1975"

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	10-1-2.5-1	X		
2. Privacy and Security Council				
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	10-1-1-13	X		
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	5-14-1-3	X		
3.12 Authorizes to Private Sector	5-14-1-3	X		
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	10-1-1-13	X		
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	5-14-1-3	X		
3.22 Authorizes to Private Sector	5-14-1-3	X		
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	10-1-1-13	X		
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	5-14-[illegible]	X		
3.32 Authorizes to Private Sector	5-[illegible]1	X		
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	4-1-6-3	X		
5. Right to Challenge	4-1-6-5	X		
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information	35-4-8-1	X		
8. Purging Conviction Information				

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information				
11. Removal of Disqualifications				
12. Right to State Non-Existence of Record				
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	10-1-1-18 10-1-1-15	X X		
14.2 Auditing Requirements				
14.3 Other Accuracy/Completeness Requirements	4-1-6-2 4-1-6-5	X X		
15. Dedication				
16. Civil Remedies				
17. Criminal Penalties	5-2-4-7 35-4-8-4	X X		
18. Public Records	4-1-6-1 5-14-1-2	X X		
19. Separation of Files	5-2-4-2	X		
20. Regulation of Intelligence Collection	5-2-4-3 5-2-4-4	X X		
21. Regulation of Intelligence Dissemination	5-2-4-6	X		
22. Security				
22.1 Physical (Building) Security	4-1-6-2	X		
22.2 Administrative Security				
22.3 Computer Security				
23. Transaction Logs	4-1-6-2	X		
24. Training Employees	4-1-6-2	X		
25. Listing of Information Systems	4-1-6-7	X		
26. FOIA (Including CJI)	4-1-6-1	X		
27. FOIA (Excluding CJI)				
28. Central State Repository	10-1-1-12 10-1-2.5-1	X X		

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	749.1 692.10	X		X
2. Privacy and Security Council	692.19			X
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	692.2			X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	692.2			X
3.12 Authorizes to Private Sector				
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector	692.2			X
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	692.2			X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	692.2			X
3.22 Authorizes to Private Sector				
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector	692.2			X
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	692.2			X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	692.2			X
3.32 Authorizes to Private Sector				
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector	692.2			X
4. Inspection				
4.1 Right to Inspect Only	692.5			X
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy				
5. Right to Challenge	692.5			X
6. Judicial Review of Challenged Information	692.5			X
7. Purging Non-Conviction Information	692.17 692.16			X X
8. Purging Conviction Information				

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information				
11. Removal of Disqualifications				
12. Right to State Non-Existence of Record				
13. Research Access	692.4			X
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	749.4 692.15; 692.21	X		X
14.2 Auditing Requirements	692.13			X
14.3 Other Accuracy/Completeness Requirements	692.5 692.21			X X
15. Dedication				
16. Civil Remedies	68A.5 692.6			X X
17. Criminal Penalties	692.5; 68A.6 692.7 692.9			X X X
18. Public Records	68A-1			X
19. Separation of Files	692.8 692.9			X X
20. Regulation of Intelligence Collection	692.8			X
21. Regulation of Intelligence Dissemination	692.8			X
22. Security				
22.1 Physical (Building) Security				
22.2 Administrative Security				
22.3 Computer Security	692.12 692.14			X X
23. Transaction Logs	692.3 692.2			X X
24. Training Employees	692.11			X
25. Listing of Information Systems				
26. FOIA (Including CJI)				
27. FOIA (Excluding CJI)	692.18			X
28. Central State Repository	749.1	X		

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CHAPTER 692

CRIMINAL HISTORY AND INTELLIGENCE DATA

692.1 DEFINITIONS OF WORDS AND PHRASES
692.2 DISSEMINATION OF CRIMINAL HISTORY DATA
692.3 REDISSEMINATION
692.4 STATISTICS
692.5 RIGHT OF NOTICE, ACCESS AND CHALLENGE
692.6 CIVIL REMEDY
692.7 CRIMINAL PENALTIES
692.8 INTELLIGENCE DATA
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692.11 EDUCATION PROGRAM
692.12 DATA PROCESSING
692.13 REVIEW
692.14 SYSTEMS FOR THE EXCHANGE OF CRIMINAL HISTORY DATA
692.15 REPORTS TO DEPARTMENT
692.16 REVIEW AND REMOVAL
692.17 EXCLUSIONS
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692.19 CONFIDENTIAL RECORDS COUNCIL
692.20 MOTOR VEHICLE OPERATOR'S RECORD EXEMPT

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692.1 DEFINITIONS OF WORDS AND PHRASES.

AS USED IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC SAFETY.

2. "BUREAU" MEANS THE DEPARTMENT OF PUBLIC SAFETY, DIVISION OF CRIMINAL INVESTIGATION AND BUREAU OF IDENTIFICATION.

3. "CRIMINAL HISTORY DATA" MEANS ANY OR ALL OF THE FOLLOWING INFORMATION MAINTAINED BY THE DEPARTMENT OR BUREAU IN A MANUAL OR AUTOMATED DATA STORAGE SYSTEM AND INDIVIDUALLY IDENTIFIED:
   A. ARREST DATA.
   B. CONVICTION DATA.
   C. DISPOSITION DATA.
   D. CORRECTIONAL DATA.

4. "ARREST DATA" MEANS INFORMATION PERTAINING TO AN ARREST FOR A PUBLIC OFFENSE AND INCLUDES THE CHARGE, DATE, TIME AND PLACE. ARREST DATA INCLUDES ARREST WARRANTS FOR ALL PUBLIC OFFENSES OUTSTANDING AND NOT SERVED AND INCLUDES THE FILING OF CHARGES, BY PRELIMINARY INFORMATION WHEN FILED BY A PEACE OFFICER OR LAW ENFORCEMENT OFFICER OR INDICTMENT, THE DATE AND PLACE OF ALLEGED COMMISSION AND COUNTY OF JURISDICTION.

5. "CONVICTION DATA" MEANS INFORMATION THAT A PERSON WAS CONVICTED OF OR ENTERED A PLEA OF GUILTY TO A PUBLIC OFFENSE AND INCLUDES THE DATE AND LOCATION OF COMMISSION AND PLACE AND COURT OF CONVICTION.

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6. "DISPOSITION DATA" MEANS INFORMATION PERTAINING TO A RECORDED COURT PROCEEDING SUBSEQUENT AND INCIDENTAL TO A PUBLIC OFFENSE ARREST AND INCLUDES DISMISSAL OF THE CHARGE, SUSPENSION OR DEFERRAL OF SENTENCE.

7. "CORRECTIONAL DATA" MEANS INFORMATION PERTAINING TO THE STATUS, LOCATION AND ACTIVITIES OF PERSONS UNDER THE SUPERVISION OF THE COUNTY SHERIFF, THE DIVISION OF CORRECTIONS OF THE DEPARTMENT OF SOCIAL SERVICES, BOARD OF PAROLE OR ANY OTHER STATE OR LOCAL AGENCY PERFORMING THE SAME OR SIMILAR FUNCTION, BUT DOES NOT INCLUDE INVESTIGATIVE, SOCIOLOGICAL, PSYCHOLOGICAL, ECONOMIC OR OTHER SUBJECTIVE INFORMATION MAINTAINED BY THE DIVISION OF CORRECTIONS OF THE DEPARTMENT OF SOCIAL SERVICES OR BOARD OF PAROLE.

8. "PUBLIC OFFENSE" AS USED IN SUBSECTIONS 4, 5 AND 6 DOES NOT INCLUDE NONINDICTABLE OFFENSES UNDER EITHER CHAPTER 321 OR LOCAL TRAFFIC ORDINANCES.

9. "INDIVIDUALLY IDENTIFIED" MEANS CRIMINAL HISTORY DATA WHICH RELATES TO A SPECIFIC PERSON BY ONE OR MORE OF THE FOLLOWING MEANS OF IDENTIFICATION:

   A. NAME AND ALIAS, IF ANY.
   B. SOCIAL SECURITY NUMBER.
   C. FINGERPRINTS.
   D. OTHER INDEX CROSS-REFERENCED TO PARAGRAPHS "A", "B", OR "C".
   E. OTHER INDIVIDUALLY IDENTIFYING CHARACTERISTICS.

10. "CRIMINAL JUSTICE AGENCY" MEANS ANY AGENCY OR DEPARTMENT OF ANY LEVEL OF GOVERNMENT WHICH PERFORMS AS ITS PRINCIPAL FUNCTION THE APPREHENSION, PROSECUTION, ADJUDICATION, INCARCERATION, OR REHABILITATION OF CRIMINAL OFFENDERS.

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11. "INTELLIGENCE DATA" MEANS INFORMATION COLLECTED WHERE THERE ARE REASONABLE GROUNDS TO SUSPECT INVOLVEMENT OR PARTICIPATION IN CRIMINAL ACTIVITY BY ANY PERSON.

12. "SURVEILLANCE DATA" MEANS INFORMATION ON INDIVIDUALS, PERTAINING TO PARTICIPATION IN ORGANIZATIONS, GROUPS, MEETINGS OR ASSEMBLIES, WHERE THERE ARE NO REASONABLE GROUNDS TO SUSPECT INVOLVEMENT OR PARTICIPATION IN CRIMINAL ACTIVITY BY ANY PERSON.

692.2 DISSEMINATION OF CRIMINAL HISTORY DATA.

THE DEPARTMENT AND BUREAU MAY PROVIDE COPIES OR COMMUNICATE INFORMATION FROM CRIMINAL HISTORY DATA ONLY TO CRIMINAL JUSTICE AGENCIES, OR SUCH OTHER PUBLIC AGENCIES AS ARE AUTHORIZED BY THE CONFIDENTIAL RECORDS COUNCIL. THE BUREAU SHALL MAINTAIN A LIST SHOWING THE INDIVIDUAL OR AGENCY TO WHOM THE DATA IS DISSEMINATED AND THE DATE OF DISSEMINATION.

AUTHORIZED AGENCIES AND CRIMINAL JUSTICE AGENCIES SHALL REQUEST AND MAY RECEIVE CRIMINAL HISTORY DATA ONLY WHEN:

1. THE DATA IS FOR OFFICIAL PURPOSES IN CONNECTION WITH PRESCRIBED DUTIES, AND

2. THE REQUEST FOR DATA IS BASED UPON NAME, FINGERPRINTS, OR OTHER INDIVIDUAL IDENTIFYING CHARACTERISTICS.

THE PROVISIONS OF THIS SECTION AND SECTION 692.3 WHICH RELATE TO THE REQUIRING OF AN INDIVIDUALLY IDENTIFIED REQUEST PRIOR TO THE DISSEMINATION OR REDISSEMINATION OF CRIMINAL HISTORY DATA SHALL NOT APPLY TO THE FURNISHING OF CRIMINAL HISTORY DATA TO THE FEDERAL BUREAU OF INVESTIGATION OR TO THE DISSEMINATION OR REDISSEMINATION OF INFORMATION THAT AN ARREST WARRANT HAS BEEN OR WILL BE ISSUED, AND

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OTHER RELEVANT INFORMATION INCLUDING BUT NOT LIMITED TO, THE OFFENSE AND THE DATE AND PLACE OF ALLEGED COMMISSION, INDIVIDUALLY IDENTIFYING CHARACTERISTICS OF THE PERSON TO BE ARRESTED, AND THE COURT OR JURISDICTION ISSUING THE WARRANT.

692.3 REDISSEMINATION.

A PEACE OFFICER, CRIMINAL JUSTICE AGENCY, OR STATE OR FEDERAL REGULATORY AGENCY SHALL NOT REDISSEMINATE CRIMINAL HISTORY DATA, WITHIN OR WITHOUT THE AGENCY, RECEIVED FROM THE DEPARTMENT OR BUREAU, UNLESS:

1. THE DATA IS FOR OFFICIAL PURPOSES IN CONNECTION WITH PRESCRIBED DUTIES OF A CRIMINAL JUSTICE AGENCY, AND

2. THE AGENCY MAINTAINS A LIST OF THE PERSONS RECEIVING THE DATA AND THE DATE AND PURPOSE OF THE DISSEMINATION, AND

3. THE REQUEST FOR DATA IS BASED UPON NAME, FINGERPRINTS, OR OTHER INDIVIDUAL IDENTIFICATION CHARACTERISTICS.

A PEACE OFFICER, CRIMINAL JUSTICE AGENCY, OR STATE OR FEDERAL REGULATORY AGENCY SHALL NOT REDISSEMINATE INTELLIGENCE DATA, WITHIN OR WITHOUT THE AGENCY, RECEIVED FROM THE DEPARTMENT OR BUREAU OR FROM ANY OTHER SOURCE, EXCEPT AS PROVIDED IN SUBSECTIONS 1 AND 2.

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692.4 STATISTICS.

THE DEPARTMENT, BUREAU, OR A CRIMINAL JUSTICE AGENCY MAY COMPILE AND DISSEMINATE CRIMINAL HISTORY DATA IN THE FORM OF STATISTICAL REPORTS DERIVED FROM SUCH INFORMATION OR AS THE BASIS OF FURTHER STUDY PROVIDED INDIVIDUAL IDENTITIES ARE NOT ASCERTAINABLE.

THE BUREAU MAY WITH THE APPROVAL OF THE COMMISSIONER OF PUBLIC SAFETY DISSEMINATE CRIMINAL HISTORY DATA TO PERSONS CONDUCTING BONA FIDE RESEARCH, PROVIDED THE DATA IS NOT INDIVIDUALLY IDENTIFIED.

692.5 RIGHT OF NOTICE, ACCESS AND CHALLENGE.

ANY PERSON OR HIS ATTORNEY WITH WRITTEN AUTHORIZATION AND FINGERPRINT IDENTIFICATION SHALL HAVE THE RIGHT TO EXAMINE CRIMINAL HISTORY DATA FILED WITH THE BUREAU THAT REFERS TO THE PERSON. THE BUREAU MAY PRESCRIBE REASONABLE HOURS AND PLACES OF EXAMINATION.

ANY PERSON WHO FILES WITH THE BUREAU A WRITTEN STATEMENT TO THE EFFECT THAT A STATEMENT CONTAINED IN THE CRIMINAL HISTORY DATA THAT REFERS TO HIM IS NONFACTUAL, OR INFORMATION NOT AUTHORIZED BY LAW TO BE KEPT, AND REQUESTS A CORRECTION OR ELIMINATION OF THAT INFORMATION THAT REFERS TO HIM SHALL BE NOTIFIED WITHIN TWENTY DAYS BY THE BUREAU, IN WRITING, OF THE BUREAU'S DECISION OR ORDER REGARDING THE CORRECTION OR ELIMINATION. JUDICIAL REVIEW OF THE ACTIONS OF THE BUREAU MAY BE SOUGHT IN ACCORDANCE WITH THE TERMS OF THE IOWA ADMINISTRATIVE PROCEDURE ACT. IMMEDIATELY UPON THE FILING OF THE PETITION FOR JUDICIAL REVIEW THE COURT SHALL ORDER THE BUREAU TO FILE WITH THE COURT A CERTIFIED COPY OF THE CRIMINAL HISTORY DATA AND IN NO OTHER SITUATION SHALL THE BUREAU FURNISH AN INDIVIDUAL OR HIS ATTORNEY WITH A CERTIFIED COPY, EXCEPT AS PROVIDED BY THIS CHAPTER.

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UPON THE REQUEST OF THE PETITIONER, THE RECORD AND EVIDENCE IN A JUDICIAL REVIEW PROCEEDING SHALL BE CLOSED TO ALL BUT THE COURT AND ITS OFFICERS, AND ACCESS THERETO SHALL BE REFUSED UNLESS OTHERWISE ORDERED BY THE COURT. THE CLERK SHALL MAINTAIN A SEPARATE DOCKET FOR SUCH ACTIONS. NO PERSON, OTHER THAN THE PETITIONER SHALL PERMIT A COPY OF ANY OF THE TESTIMONY OR PLEADINGS OR THE SUBSTANCE THEREOF TO BE MADE AVAILABLE TO ANY PERSON OTHER THAN A PARTY TO THE ACTION OR HIS ATTORNEY. VIOLATION OF THE PROVISIONS OF THIS SECTION SHALL BE A PUBLIC OFFENSE, PUNISHABLE UNDER SECTION 692.7.

WHENEVER THE BUREAU CORRECTS OR ELIMINATES DATA AS REQUESTED OR AS ORDERED BY THE COURT, THE BUREAU SHALL ADVISE ALL AGENCIES OR INDIVIDUALS WHO HAVE RECEIVED THE INCORRECT INFORMATION TO CORRECT THEIR FILES. UPON APPLICATION TO THE DISTRICT COURT AND SERVICE OF NOTICE ON THE COMMISSIONER OF PUBLIC SAFETY, ANY INDIVIDUAL MAY REQUEST AND OBTAIN A LIST OF ALL PERSONS AND AGENCIES WHO RECEIVED CRIMINAL HISTORY DATA REFERRING TO HIM, UNLESS GOOD CAUSE BE SHOWN WHY THE INDIVIDUAL SHOULD NOT RECEIVE SAID LIST.

692.6 CIVIL REMEDY.

ANY PERSON MAY INSTITUTE A CIVIL ACTION FOR DAMAGES UNDER CHAPTER 25A or 613A OR TO RESTRAIN THE DISSEMINATION OF HIS CRIMINAL HISTORY DATA OR INTELLIGENCE DATA IN VIOLATION OF THIS CHAPTER, AND ANY PERSON, AGENCY OR GOVERNMENTAL BODY PROVEN TO HAVE DISSEMINATED OR TO HAVE REQUESTED AND RECEIVED CRIMINAL HISTORY DATA OR INTELLIGENCE DATA IN VIOLATION OF THIS CHAPTER SHALL BE LIABLE FOR ACTUAL DAMAGES AND EXEMPLARY DAMAGES FOR EACH VIOLATION AND SHALL BE LIABLE FOR COURT COSTS, EXPENSES AND REASONABLE ATTORNEYS' FEES INCURRED BY THE PARTY BRINGING THE ACTION. IN NO CASE SHALL THE AWARD FOR DAMAGES BE LESS THAN ONE HUNDRED DOLLARS.

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692.7 CRIMINAL PENALTIES.

1. ANY PERSON WHO WILLFULLY REQUESTS, OBTAINS, OR SEEKS TO OBTAIN CRIMINAL HISTORY DATA UNDER FALSE PRETENSES, OR WHO WILLFULLY COMMUNICATES OR SEEKS TO COMMUNICATE CRIMINAL HISTORY DATA TO ANY AGENCY OR PERSON EXCEPT IN ACCORDANCE WITH THIS CHAPTER, OR ANY PERSON CONNECTED WITH ANY RESEARCH PROGRAM AUTHORIZED PURSUANT TO THIS CHAPTER WHO WILLFULLY FALSIFIES CRIMINAL HISTORY DATA OR ANY RECORDS RELATING THERETO, SHALL, UPON CONVICTION, FOR EACH SUCH OFFENSE BE GUILTY OF AN AGGRAVATED MISDEMEANOR. ANY PERSON WHO KNOWINGLY, BUT WITHOUT CRIMINAL PURPOSES, COMMUNICATES OR SEEKS TO COMMUNICATE CRIMINAL HISTORY DATA EXCEPT IN ACCORDANCE WITH THIS CHAPTER SHALL BE GUILTY OF A SIMPLE MISDEMEANOR.

2. ANY PERSON WHO WILLFULLY REQUESTS, OBTAINS, OR SEEKS TO OBTAIN INTELLIGENCE DATA UNDER FALSE PRETENSES, OR WHO WILLFULLY COMMUNICATES OR SEEKS TO COMMUNICATE INTELLIGENCE DATA TO ANY AGENCY OR PERSON EXCEPT IN ACCORDANCE WITH THIS CHAPTER, SHALL FOR EACH SUCH OFFENSE BE GUILTY OF A CLASS "D" FELONY. ANY PERSON WHO KNOWINGLY, BUT WITHOUT CRIMINAL PURPOSES, COMMUNICATES OR SEEKS TO COMMUNICATE INTELLIGENCE DATA EXCEPT IN ACCORDANCE WITH THIS CHAPTER SHALL FOR EACH SUCH OFFENSE BE GUILTY OF A SERIOUS MISDEMEANOR.

3. IF A PERSON CONVICTED UNDER THIS SECTION IS A PEACE OFFICER, THE CONVICTION SHALL BE GROUNDS FOR DISCHARGE OR SUSPENSION FROM DUTY WITHOUT PAY AND IF THE PERSON CONVICTED IS A PUBLIC OFFICIAL OR PUBLIC EMPLOYEE, THE CONVICTION SHALL BE GROUNDS FOR REMOVAL FROM OFFICE.

4. ANY REASONABLE GROUNDS FOR BELIEF THAT A PUBLIC EMPLOYEE HAS VIOLATED ANY PROVISION OF THIS CHAPTER SHALL BE GROUNDS FOR IMMEDIATE REMOVAL FROM ALL ACCESS TO CRIMINAL HISTORY DATA AND INTELLIGENCE DATA.

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692.8 INTELLIGENCE DATA.

INTELLIGENCE DATA CONTAINED IN THE FILES OF THE DEPARTMENT OF PUBLIC SAFETY OR A CRIMINAL JUSTICE AGENCY SHALL NOT BE PLACED WITHIN A COMPUTER DATA STORAGE SYSTEM.

INTELLIGENCE DATA IN THE FILES OF THE DEPARTMENT MAY BE DISSEMINATED ONLY TO A PEACE OFFICER, CRIMINAL JUSTICE AGENCY, OR STATE OR FEDERAL REGULATORY AGENCY, AND ONLY IF THE DEPARTMENT IS SATISFIED THAT THE NEED TO KNOW AND THE INTENDED USE ARE REASONABLE. WHENEVER INTELLIGENCE DATA RELATING TO A DEFENDANT FOR THE PURPOSE OF SENTENCING HAS BEEN PROVIDED A COURT, THE COURT SHALL INFORM THE DEFENDANT OR HIS ATTORNEY THAT IT IS IN POSSESSION OF SUCH DATA AND SHALL, UPON REQUEST OF THE DEFENDANT OR HIS ATTORNEY, PERMIT EXAMINATION OF SUCH DATA.

IF THE DEFENDANT DISPUTES THE ACCURACY OF THE INTELLIGENCE DATA, HE SHALL DO SO BY FILING AN AFFIDAVIT STATING THE SUBSTANCE OF THE DISPUTED DATA AND WHEREIN IT IS INACCURATE. IF THE COURT FINDS REASONABLE DOUBT AS TO THE ACCURACY OF SUCH INFORMATION, IT MAY REQUIRE A HEARING AND THE EXAMINATION OF WITNESSES RELATING THERETO ON OR BEFORE THE TIME SET FOR SENTENCING.

692.9 SURVEILLANCE DATA PROHIBITED.

NO SURVEILLANCE DATA SHALL BE PLACED IN FILES OR MANUAL OR AUTOMATED DATA STORAGE SYSTEMS BY THE DEPARTMENT OR BUREAU OR BY ANY PEACE OFFICER OR CRIMINAL JUSTICE AGENCY. VIOLATION OF THE PROVISIONS OF THIS SECTION SHALL BE A PUBLIC OFFENSE PUNISHABLE UNDER SECTION 692.7.

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692.10 RULES.

THE DEPARTMENT SHALL ADOPT RULES DESIGNED TO ASSURE THE SECURITY AND CONFIDENTIALITY OF ALL CRIMINAL HISTORY DATA AND INTELLIGENCE DATA SYSTEMS.

692.11 EDUCATION PROGRAM.

THE DEPARTMENT SHALL REQUIRE AN EDUCATIONAL PROGRAM FOR ITS EMPLOYEES AND THE EMPLOYEES OF CRIMINAL JUSTICE AGENCIES ON THE PROPER USE AND CONTROL OF CRIMINAL HISTORY DATA AND INTELLIGENCE DATA.

692.12 DATA PROCESSING.

NOTHING IN THIS CHAPTER SHALL PRECLUDE THE USE OF THE EQUIPMENT AND HARDWARE OF THE DATA PROCESSING SERVICE CENTER FOR THE STORAGE AND RETRIEVAL OF CRIMINAL HISTORY DATA. FILES SHALL BE STORED ON THE COMPUTER IN SUCH A MANNER AS THE FILES CANNOT BE MODIFIED, DESTROYED, ACCESSED, CHANGED OR OVERLAID IN ANY FASHION BY NONCRIMINAL JUSTICE AGENCY TERMINALS OR PERSONNEL. THAT PORTION OF ANY COMPUTER, ELECTRONIC SWITCH OR MANUAL TERMINAL HAVING ACCESS TO CRIMINAL HISTORY DATA STORED IN THE STATE COMPUTER MUST BE UNDER THE MANAGEMENT CONTROL OF A CRIMINAL JUSTICE AGENCY.

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692.13 REVIEW.

THE DEPARTMENT SHALL INITIATE PERIODIC REVIEW PROCEDURES DESIGNED TO DETERMINE COMPLIANCE WITH THE PROVISIONS OF THIS CHAPTER WITHIN THE DEPARTMENT AND BY CRIMINAL JUSTICE AGENCIES AND TO DETERMINE THAT DATA FURNISHED TO THEM IS FACTUAL AND ACCURATE.

692.14 SYSTEMS FOR THE EXCHANGE OF CRIMINAL HISTORY DATA.

THE DEPARTMENT SHALL REGULATE THE PARTICIPATION BY ALL STATE AND LOCAL AGENCIES IN ANY SYSTEM FOR THE EXCHANGE OF CRIMINAL HISTORY DATA, AND SHALL BE RESPONSIBLE FOR ASSURING THE CONSISTENCY OF SUCH PARTICIPATION WITH THE TERMS AND PURPOSES OF THIS CHAPTER.

DIRECT ACCESS TO SUCH SYSTEMS SHALL BE LIMITED TO SUCH CRIMINAL JUSTICE AGENCIES AS ARE EXPRESSLY DESIGNATED FOR THAT PURPOSE BY THE DEPARTMENT. THE DEPARTMENT SHALL, WITH RESPECT TO TELECOMMUNICATIONS TERMINALS EMPLOYED IN THE DISSEMINATION OF CRIMINAL HISTORY DATA, INSURE THAT SECURITY IS PROVIDED OVER AN ENTIRE TERMINAL OR THAT PORTION ACTUALLY AUTHORIZED ACCESS TO CRIMINAL HISTORY DATA.

692.15 REPORTS TO DEPARTMENT.

WHEN IT COMES TO THE ATTENTION OF A SHERIFF, POLICE DEPARTMENT, OR OTHER LAW ENFORCEMENT AGENCY THAT A PUBLIC OFFENSE HAS BEEN COMMITTED IN ITS JURISDICTION, IT SHALL BE THE DUTY OF THE LAW

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ENFORCEMENT AGENCY TO REPORT INFORMATION CONCERNING SUCH CRIMES TO THE BUREAU ON A FORM TO BE FURNISHED BY THE BUREAU NOT MORE THAN THIRTY FIVE DAYS FROM THE TIME THE CRIME FIRST COMES TO THE ATTENTION OF SUCH LAW ENFORCEMENT AGENCY. THESE REPORTS SHALL BE USED TO GENERATE CRIME STATISTICS. THE BUREAU SHALL SUBMIT STATISTICS TO THE GOVERNOR, LEGISLATURE AND CRIME COMMISSION ON A QUARTERLY AND YEARLY BASIS.

WHEN A SHERIFF, POLICE DEPARTMENT OR OTHER LAW ENFORCEMENT AGENCY MAKES AN ARREST WHICH IS REPORTED TO THE BUREAU, THE ARRESTING LAW ENFORCEMENT AGENCY AND ANY OTHER LAW ENFORCEMENT AGENCY WHICH OBTAINS CUSTODY OF THE ARRESTED PERSON SHALL FURNISH A DISPOSITION REPORT TO THE BUREAU WHENEVER THE ARRESTED PERSON IS TRANSFERRED TO THE CUSTODY OF ANOTHER LAW ENFORCEMENT AGENCY OR IS RELEASED WITHOUT HAVING A COMPLAINT OR INFORMATION FILED WITH ANY COURT.

WHENEVER A CRIMINAL COMPLAINT OR INFORMATION IS FILED IN ANY COURT, THE CLERK SHALL FURNISH A DISPOSITION REPORT OF SUCH CASE.

THE DISPOSITION REPORT, WHETHER BY A LAW ENFORCEMENT AGENCY OR COURT, SHALL BE SENT TO THE BUREAU WITHIN THIRTY DAYS AFTER DISPOSITION ON A FORM PROVIDED BY THE BUREAU.

692.16 REVIEW AND REMOVAL.

AT LEASE EVERY YEAR THE BUREAU SHALL REVIEW AND DETERMINE CURRENT STATUS OF ALL IOWA ARRESTS REPORTED AFTER AUGUST 15, 1973,

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WHICH ARE AT LEAST ONE YEAR OLD WITH NO DISPOSITION DATA. ANY IOWA ARREST RECORDED WITHIN A COMPUTER DATA STORAGE SYSTEM WHICH HAS NO DISPOSITION DATA AFTER FIVE YEARS SHALL BE REMOVED UNLESS THERE IS AN OUTSTANDING ARREST WARRANT OR DETAINER ON SUCH CHARGE.

692.17 EXCLUSIONS.

CRIMINAL HISTORY DATA IN A COMPUTER DATA STORAGE SYSTEM DOES NOT INCLUDE ARREST OR DISPOSITION DATA AFTER THE PERSON HAS BEEN ACQUITTED OR THE CHARGES DISMISSED.

692.18 PUBLIC RECORDS.

NOTHING IN THIS CHAPTER SHALL PROHIBIT THE PUBLIC FROM EXAMINING AND COPYING THE PUBLIC RECORDS OF ANY PUBLIC BODY OR AGENCY AS AUTHORIZED BY CHAPTER 68A.

CRIMINAL HISTORY DATA AND INTELLIGENCE DATA IN THE POSSESSION OF THE DEPARTMENT OR BUREAU, OR DISSEMINATED BY THE DEPARTMENT OR BUREAU, ARE NOT PUBLIC RECORDS WITHIN THE PROVISIONS OF CHAPTER 68A.

692.19 CONFIDENTIAL RECORDS COUNCIL.

THERE IS HEREBY CREATED A CONFIDENTIAL RECORDS COUNCIL CONSISTING OF NINE REGULAR MEMBERS. TWO MEMBERS SHALL BE APPOINTED FROM THE

HOUSE OF REPRESENTATIVES TO SERVE AS EX OFFICIO NONVOTING MEMBERS BY THE SPEAKER OF THE HOUSE, NO MORE THAN ONE OF WHOM SHALL BE FROM THE SAME PARTY. TWO MEMBERS SHALL BE APPOINTED FROM THE SENATE TO SERVE AS EX OFFICIO NONVOTING MEMBERS BY THE LIEUTENANT GOVERNOR, NO MORE THAN ONE OF WHOM SHALL BE FROM THE SAME PARTY. THE OTHER MEMBERS OF THE COUNCIL SHALL BE: A JUDGE OF THE DISTRICT COURT APPOINTED BY THE CHIEF JUSTICE OF THE SUPREME COURT, ONE LOCAL LAW ENFORCEMENT OFFICIAL, APPOINTED BY THE GOVERNOR: THE COMMISSIONER OF PUBLIC SAFETY OR HIS DESIGNEE: AND TWO PRIVATE CITIZENS NOT CONNECTED WITH LAW ENFORCEMENT, APPOINTED BY THE GOVERNOR. THE COUNCIL SHALL SELECT ITS OWN CHAIRMAN. THE MEMBERS SHALL SERVE AT THE PLEASURE OF THOSE BY WHOM THEIR APPOINTMENTS ARE MADE

THE COUNCIL SHALL MEET AT LEAST ANNUALLY AND AT ANY OTHER TIME UPON THE CALL OF THE GOVERNOR, THE CHAIRMAN OF THE COUNCIL, OR ANY THREE OF ITS MEMBERS. EACH NONLEGISLATIVE COUNCIL MEMBER SHALL BE ENTITLED TO REIMBURSEMENT FOR ACTUAL EXPENSES INCURRED IN THE PERFORMANCE OF OFFICIAL DUTIES FROM FUNDS APPROPRIATED TO THE DEPARTMENT OF PUBLIC SAFETY. EACH LEGISLATIVE MEMBER SHALL RECEIVE EXPENSES PURSUANT TO SECTION 2.10 AND SECTION 2.12.

THE COUNCIL SHALL HAVE THE FOLLOWING RESPONSIBILITIES AND DUTIES:

1. SHALL PERIODICALLY MONITOR THE OPERATION OF GOVERNMENTAL INFORMATION SYSTEMS WHICH DEAL WITH THE COLLECTION, STORAGE, USE AND DISSEMINATION OF CRIMINAL HISTORY OR INTELLIGENCE DATA.

2. SHALL REVIEW THE IMPLEMENTATION AND EFFECTIVENESS OF LEGISLATION AND ADMINISTRATIVE RULES CONCERNING SUCH SYSTEMS.

3. MAY RECOMMEND CHANGES IN SAID RULES AND LEGISLATION TO THE LEGISLATURE AND THE APPROPRIATE ADMINISTRATIVE OFFICIALS.

4. MAY REQUIRE SUCH REPORTS FROM STATE AGENCIES AS MAY BE NECESSARY TO PERFORM ITS DUTIES.

5. MAY RECEIVE AND REVIEW COMPLAINTS FROM THE PUBLIC CONCERNING THE OPERATION OF SUCH SYSTEMS.

6. MAY CONDUCT SUCH INQUIRIES AND INVESTIGATIONS AS IT FINDS APPROPRIATE TO ACHIEVE THE PURPOSES OF THIS CHAPTER. EACH CRIMINAL JUSTICE AGENCY IN THIS STATE AND EACH STATE AND LOCAL AGENCY OTHERWISE AUTHORIZED ACCESS TO CRIMINAL HISTORY DATA IS AUTHORIZED AND DIRECTED TO FURNISH TO THE COUNCIL, UPON ITS REQUEST, SUCH STATISTICAL DATA, REPORTS, AND OTHER INFORMATION IN ITS POSSESSION AS THE COUNCIL DEEMS NECESSARY TO CARRY OUT ITS FUNCTIONS UNDER THIS CHAPTER. HOWEVER, THE COUNCIL AND ITS MEMBERS, IN SUCH CAPACITY, SHALL NOT HAVE ACCESS TO CRIMINAL HISTORY DATA OR INTELLIGENCE DATA UNLESS IT IS DATA FROM WHICH INDIVIDUAL IDENTITIES ARE NOT ASCERTAINABLE OR DATA WHICH HAS BEEN MASKED SO THAT INDIVIDUAL IDENTITIES ARE NOT ASCERTAINABLE. HOWEVER, THE COUNCIL MAY EXAMINE DATA FROM WHICH THE IDENTITY OF AN INDIVIDUAL IS ASCERTAINABLE IF REQUESTED IN WRITING BY THAT INDIVIDUAL OR HIS ATTORNEY WITH WRITTEN AUTHORIZATION AND FINGERPRINT IDENTIFICATION.

7. SHALL ANNUALLY APPROVE RULES ADOPTED IN ACCORDANCE WITH SECTION 692.10 AND RULES TO ASSURE THE ACCURACY, COMPLETENESS AND PROPER PURGING OF CRIMINAL HISTORY DATA.

8. SHALL APPROVE ALL AGREEMENTS, ARRANGEMENTS AND SYSTEMS FOR THE INTERSTATE TRANSMISSION AND EXCHANGE OF CRIMINAL HISTORY DATA.

692.20 MOTOR VEHICLE OPERATOR'S RECORD EXEMPT.

THE PROVISIONS OF SECTIONS 692.2 and 692.3 SHALL NOT APPLY TO THE CERTIFYING OF AN INDIVIDUAL'S OPERATING RECORD PURSUANT TO SECTION 321A.3.

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692.21 Data to arresting agency

The clerk of the district court shall forward conviction and disposition data to the criminal justice agency making the arrest within thirty days of final court disposition of the case.
Added by Acts 1980 (68 G.A.) ch. 1180, § 2.

Title of Act:
An Act relating to the determination of the salaries for the area education agency administrators. Acts 1980 (68 G.A.) ch. 1180.

1. In general
Magistrates and clerks of court are required under § 321.491 to forward to the Department of Transportation records of conviction or forfeitures of bonds for either indictable or nonindictable traffic offenses. Conviction and disposition data referred to in this section must be forwarded to the arresting agency only if the traffic violation is an indictable offense. Op.Atty.Gen. (Larsen), October 30, 1980.

* * *

Chapter 68A

EXAMINATION OF PUBLIC RECORDS

Sec.

68A.1 Public records defined.
68A.2 Citizen's right to examine.
68A.3 Supervision.
68A.4 Hours when available.
68A.5 Enforcement of rights.
68A.6 Penalty.
68A.7 Confidential records.
68A.8 Injunction to restrain examination.
68A.9 Denial of federal funds.

Provisions constituting chapter 68A, Examination of Public Records, consisting of sections 68A.1 to 68A.9, were enacted by Acts 1967 (62 G.A.) ch. 106, effective August 9, 1967.

Cross References

Archives, defined, see § 303.9.
Certified copy of record, instrument, as evidence, see § 622.37.
Copies of records on demand, see § 662.46.
Delivery of records to Iowa state department and archives, see § 303.10.
Department of banking, applicability of § 68A.1 et seq., see § 524.215.
Entries in public offices, as evidence, see §§ 622.43, 622.44.
Official reports and documents, see § 17.1 et seq.

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68A.1 Public records defined

Wherever used in this chapter, "public records" includes all records and documents of or belonging to this state or any county, city, town, township, school corporation, political subdivision, or tax-supported district in this state, or any branch, department, board, bureau, commission, council, or committee of any of the foregoing.

Acts 1967 (62 G.A.) ch. 106, § 1, eff. Aug. 9, 1967.

Historical Note

Title of Act:

An Act to protect the right of citizens to examine public records and make copies thereof. Acts 1967 (62 G.A.) ch. 106.

Library References

Administrative Law and Procedure ⇐127.
Records ⇐14.

C.J.S. Public Administrative Bodies and Procedure § 22.
C.J.S. Records § 35 et seq.

Notes of Decisions

In general 1
Rules and regulations 2

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1. In general

Worksheets and notes prepared by bureau of labor inspectors are not "public records", and may be kept confidential. Op.Atty.Gen. (Addy), Sept. 26, 1972.

A sheriff's records with reference to unpaid "special" or "reserve" deputies are not "public records" within § 68A.1 et seq. Op.Atty.Gen. (Bennett), Sept. 18, 1972.

Composite scores of Iowa basic skill tests and Iowa tests of educational development are not excluded from public record law, § 68A.1 et seq. Op.Atty.Gen. (Kliebenstein), May 15, 1972.

County attorneys or their representatives have unimpeded access to records of their county board of social welfare for discovery or prosecution of frauds in welfare programs. Op.Atty.Gen. (Fischer), March 3, 1972.

Records of justices of the peace court are public and citizens have the right to examine the same subject to specific statutory exceptions. Op.Atty.Gen. (Carr), July 14, 1970.

List of bank stockholders furnished assessor is a public record which any citizen has a right to examine pursuant to this chapter. Op.Atty.Gen., 1968, p. 516.

Records of investigation conducted pursuant to requirement of law by public officers for the benefit of board of parole, wherein those furnishing the information must exercise judgment, express opinions and make conclusions should be, as a matter of public policy, confidential. Op.Atty.Gen., 1968, p. 491.

The board of social welfare must conduct open meetings in every instance except where an exemption would allow closed meetings. Op.Atty.Gen., 1967, p. 281.

2. Rules and regulations

Certain regulations which were adopted by the board of nursing in order to comply with the provisions of this section are deemed reasonable and in accord with statute. Op.Atty.Gen., 1968, p. 729.

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68A.2 Citizen's right to examine

Every citizen of Iowa shall have the right to examine all public records and to copy such records, and the news media may publish such records, unless some other provision of the Code expressly limits such right or requires such records to be kept secret or confidential. The right to copy records shall include the right to make photographs or photographic copies while the records are in the possession of the lawful custodian of the records. All rights under this section are in addition to the right to obtain certified copies of records under section 622.46.

Acts 1967 (62 G.A.) ch. 106, § 2, eff. Aug. 9, 1967.

Law Review Commentaries

Access to public records. 57 Iowa L. Rev. 1163 (1972).

Library References

Records ⇐14. C.J.S. Records § 35 et seq.

68A.3 Supervision

Such examination and copying shall be done under the supervision of the lawful custodian of the records or his authorized deputy. The lawful custodian may adopt and enforce reasonable rules regarding such work and the protection of the records against damage or disorganization. The lawful custodian shall provide a suitable place for such work, but if it is impracticable to do such work in the office of the lawful custodian, the person desiring to examine or copy shall pay any necessary expenses of providing a place for such work. All expenses of such work shall be paid by the person desiring to examine or copy. The lawful custodian may charge a reasonable fee for the services of the lawful custodian or his authorized deputy in supervising the records during such work. If copy equipment is available at the office of the lawful custodian of any public records, the lawful custodian shall provide any person a reasonable number of copies of any public record in the custody of the office upon the payment of a fee. The fee for the copying service as determined by the lawful custodian shall not exceed the cost of providing the service.

Amended by Acts 1976 (66 G.A.) ch. 1079, § 1.

1976 Amendment: Inserted "If copy equipment is available at the office of the lawful custodian of any public records, the lawful custodian shall provide any person a reasonable number of copies of any public record in the custody of the office upon the payment of a fee. The fee for the copying service as determined by the lawful custodian shall not exceed the cost of providing the service".

1. In general

Minutes of open meetings of governmental bodies are "public records", and a member of the public at large is entitled to examine and obtain copies of such minutes. The records custodian must provide copies of the minutes only upon payment of the expenses, excluding the fees for postage, incurred to provide copies. Op.Atty.Gen. (Menke), April 20, 1979.

The relationship of the office of the secretary of state and Iowa Search, Inc., a private corporation for purpose of facilitating search of public records, is not in violation of Constitution or law, such relationship serves a public purpose, not a private purpose. Op. Atty.Gen. (Miller), April 4, 1979.

It is not a violation of law for the Secretary of State to make space available to a private corporation in the offices of the Uniform Commercial Code Division and to make a charge therefor to facilitate searches of public records by such corporation. Op.Atty.Gen. (Synhorst), Oct. 30, 1978.

Section 68A.1 applies to the records of law enforcement agencies. Certain records specified in § 68A.7 are confidential. Records not so excluded are available to the public under the provisions of this chapter. Op.Atty.Gen. (Poncy), April 26, 1976.

The public has the right to examine and copy a written agency evaluation of an independent Chapter 125 alcoholism facility compiled by the state division on alcoholism when the contents of patient records would not be revealed. Op.Atty.Gen. (Voskans), Feb. 10, 1976.

2. Rules and regulations

State officers must allow the examination and reproduction of copies of list of names and addresses of state employees. It may provide computerized list of same at requestors' cost. State officers may not allow examination and reproduction of personal information in confidential personnel records. Information as to which employees participate in the Deferred Compensation Plan, including named insured, company providing individual policy, and amount is such information which is confidential. Op.Atty.Gen. (Selden), Feb. 27, 1974.

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68A.4 Hours when available

The rights of citizens under this chapter may be exercised at any time during the customary office hours of the lawful custodian of the records. However, if the lawful custodian does not have customary office hours of at least thirty hours per week, such right may be exercised at any time from nine o'clock a. m. to noon and from one o'clock p. m. to four o'clock p. m. Monday through Friday, excluding legal holidays, unless the citizen exercising such right and the lawful custodian agree on a different time.

Acts 1967 (62 G.A.) ch. 106, § 4, eff. Aug. 9, 1967.

68A.5 Enforcement of rights

The provisions of this chapter and all rights of citizens under this chapter may be enforced by mandamus or injunction, whether or not any other remedy is also available. In the alternative, rights under this chapter also may be enforced by an action for judicial review according to the provisions of the Iowa administrative procedure Act, if the records involved are records of an "agency" as defined in that Act.

Amended by Acts 1974 (65 G.A.) ch. 1090, § 210, eff. July 1, 1975.

1974 Amendment: Re-wrote the section.

68A.6 Penalty

It shall be unlawful for any person to deny or refuse any citizen of Iowa any right under this chapter, or to cause any such right to be denied or refused. Any person knowingly violating or attempting to violate any provision of this chapter where no other penalty is provided shall be guilty of a simple misdemeanor.

Amended by Acts 1976 (66 G.A.) ch. 1245 (ch. 4), § 28, eff. Jan. 1, 1978.

1976 Amendment. Added "simple" misdemeanor and deleted a specified penalty.

68A.7 Confidential records

The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release information:

[*See main volume for text of 1 to 11*]

12. Financial statements submitted to the Iowa state commerce commission pursuant to chapter 542 or chapter 543, by or on behalf of a licensed grain dealer or warehouseman or by an applicant for a grain dealer license or warehouse license.

13. The records of a library which, by themselves or when examined with other public records, would reveal the identity of the library patron checking out or requesting an item from the library.

68A.8 Injunction to restrain examination

In accordance with the rules of civil procedure the district court may grant an injunction restraining the examination (including copying) of a specific public record, if the petition supported by affidavit shows and if the court finds that such examination would clearly not be in the public interest and would substantially and irreparably injure any person or persons. The district court shall take into account the policy of this chapter that free and open examination of public records is generally in the public interest, even though such ex-

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amination may cause inconvenience or embarrassment to public officials or others. Such injunction shall be subject to the rules of civil procedure except that the court in its discretion may waive bond. Reasonable delay by any person in permitting the examination of a record in order to seek an injunction under this section is not a violation of this chapter, if such person believes in good faith that he is entitled to an injunction restraining the examination of such record.

Acts 1967 (62 G.A.) ch. 106, § 8, eff. Aug. 9, 1967.

Historical Note

Acts 1967 (62 G.A.) ch. 106, §§ 1–8, 11 are codified as sections 68A.1 to 68A.9; section 9 of the act amended section 91.13, Code 1966 and section 10 thereof amended section 422.65, Code 1966.

Cross References

Injunctions, generally, see Iowa Rules Civ.Proc., rule 320 et seq.

Library References

Injunction ⇐74. C.J.S. Injunctions § 108 et seq.

Notes of Decisions

1. In general

Personal information contained in personal file maintained for each registered professional engineer may be kept confidential and not open for public inspection. Op.Atty.Gen., 1968, p. 665.

68A.9 Denial of federal funds

If it is determined that any provision of this chapter would cause the denial of funds, services or essential information from the United States government which would otherwise definitely be available to an agency of this state, such provision shall be suspended as to such agency, but only to the extent necessary to prevent denial of such funds, services, or essential information.

Acts 1967 (62 G.A.) ch. 106, § 11, eff. Aug. 9, 1967.

Library References

States ⇐121. C.J.S. States § 132.

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	22-4704			X
2. Privacy and Security Council	22-4704			X
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	22-4704, Reg. 10-12-1			X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	22-4704, Reg. 10-12-1			X
3.12 Authorizes to Private Sector	22-4704, Reg. 10-12-1			X
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	22-4704, Reg. 10-12-2			X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies				
3.22 Authorizes to Private Sector				
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies	22-4712			X
3.25 Prohibits to Private Sector	22-4712			X
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	22-4704, Reg. 10-12-2			X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies				
3.32 Authorizes to Private Sector				
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies	22-4712			X
3.35 Prohibits to Private Sector	22-4712			X
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes	22-4709			X
4.3 Right to Inspect and Obtain Copy				
5. Right to Challenge	22-4709			X
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information				
8. Purging Conviction Information	21-4619			X

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information				
11. Removal of Disqualifications	22-3722 21-4619	X		X
12. Right to State Non-Existence of Record	22-4712			X
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	22-4705(c) Reg. 10-10-2,3,4			X X
14.2 Auditing Requirements	22-4704(c)(6)			X
14.3 Other Accuracy/Completeness Requirements	Reg. 10-10-1 21-2501	X		X
15. Dedication				
16. Civil Remedies	22-4707			X
17. Criminal Penalties	22-4710 22-4707			X X
18. Public Records	45-201	X		
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security	22-4704			X
22.1 Physical (Building) Security	Reg. 10-11-1			X
22.2 Administrative Security	Reg. 10-11-1			X
22.3 Computer Security	Reg. 10-11-1			X
23. Transaction Logs	Reg. 10-14-1			X
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)	50-712	X		
27. FOIA (Excluding CJI)				
28. Central State Repository	22-4705			X

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Kansas Statutes Annotated
Title 22

Article 47.—CRIMINAL HISTORY RECORD INFORMATION

22-4701. Definitions. As used in this act, unless the context clearly requires otherwise, the following words and phrases shall have the meanings ascribed to them herein:

(a) "Central repository" means the criminal justice information system central repository created by this act.

(b) "Criminal history record information" means data initiated or collected by a criminal justice agency on a person pertaining to a reportable event. The term does not include:

(1) Data contained in intelligence or investigatory files or police work-product records used solely for police investigation purposes;

(2) data pertaining to a proceeding pursuant to the Kansas juvenile code, but it does include data pertaining to a person following waiver of jurisdiction pursuant to K.S.A. 1978 Supp. 38-808;

(3) wanted posters, police blotter entries, court records of public judicial proceedings, or published court opinions;

(4) data pertaining to violations of the traffic laws of the state or any other traffic law or ordinance, other than vehicular homicide; or

(5) presentence investigation and other reports prepared for use by a court in the exercise of criminal jurisdiction or by the governor in the exercise of the power of pardon, reprieve or commutation.

(c) "Criminal justice agency" means any government agency or subdivision of any such agency which is authorized by law to exercise the power of arrest, detention, prosecution, adjudication, correctional supervision, rehabilitation, or release of persons suspected, charged, or convicted of a crime and which allocates a substantial portion of its annual budget to any of these functions. The term includes, but is not limited to, the following agencies, when exercising jurisdiction over criminal matters or criminal history record information:

(1) State, county, municipal and railroad police departments, sheriffs' offices and county-wide law enforcement agencies, correctional facilities, jails, and detention centers;

(2) the offices of the attorney general, county or district attorneys, and any other office in which are located persons authorized by law to prosecute persons accused of criminal offenses;

(3) the district courts, the court of appeals, the supreme court, the municipal courts and the offices of the clerks of these courts.

(d) "Criminal justice information system" means the equipment (including computer hardware and software), facilities, procedures, agreements, and personnel used in the collection, processing, preservation, and dissemination of criminal history record information.

(e) "Disseminate" means to transmit criminal history record information in any oral or written form. The term does not include:

(1) The transmittal of such information within a criminal justice agency;

(2) the reporting of such information as required by this act; or

(3) the transmittal of such information between criminal justice agencies in order to permit the initiation of subsequent criminal justice proceedings against a person relating to the same offense.

(f) "Reportable event" means an event specified or provided for in K.S.A. 1978 Supp. 22-4705.

(g) "Director" means the director of the Kansas bureau of investigation.

History: L. 1978, ch. 118, § 1; March 1.

CASE ANNOTATIONS

1. 22-4712 construed as part of act and held inapplicable to district court records of criminal proceedings. Stephens v. Van Arsdale, 227 K. 676, 684, 608 P.2d 972.

22-4702, 22-4703.

History: L. 1978, ch. 118, §§ 2, 3; Repealed, L. 1978, ch. 118, § 12; July 1, 1979.

22-4704. Rules and regulations. (a) In accordance with the provisions of K.S.A. 77-415 *et seq.*, and amendments thereto, the director shall adopt appropriate rules and regulations for agencies in the executive branch of government and for criminal justice agencies other than those that are part of the judicial branch of government to implement the provisions of this act.

(b) The director shall develop proce-

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dures to permit and encourage the transfer of criminal history record information among and between courts and affected agencies in the executive branch, and especially between courts and the central repository.

(c) The rules and regulations adopted by the director shall include those: (1) Governing the collection, reporting, and dissemination of criminal history record information by criminal justice agencies;

(2) necessary to insure the security of all criminal history record information reported, collected and disseminated by and through the criminal justice information system;

(3) necessary for the coordination of all criminal justice data and information processing activities as they relate to criminal history record information;

(4) governing the dissemination of criminal history record information;

(5) governing the procedures for inspection and challenging of criminal history record information;

(6) governing the auditing of criminal justice agencies to insure that criminal history record information is accurate and complete and that it is collected, reported, and disseminated in accordance with this act;

(7) governing the development and content of agreements between the central repository and criminal justice and noncriminal justice agencies;

(8) governing the exercise of the rights of inspection and challenge provided in this act.

(d) Rules and regulations adopted by the director may not be inconsistent with the provisions of this act.

History: L. 1978, ch. 118, § 4; L. 1979, ch. 102, § 1; July 1.

CASE ANNOTATIONS

1. Mentioned in holding 22-4712 inapplicable to district court records of criminal proceedings. Stephens v. Van Arsdale, 227 K. 676, 685, 608 P.2d 972.

22-4705. Reportable events; establishment of criminal justice information system central repository; reports; method of reporting. (a) The following events are reportable events under this act:

(1) Issuance of an arrest warrant;

(2) an arrest;

(3) release of a person after arrest without the filing of a charge;

(4) dismissal or quashing of an indictment or criminal information;

(5) an acquittal, conviction, or other disposition at or following trial, including a finding of probation before judgment;

(6) imposition of a sentence;

(7) commitment to a correctional facility, whether state or locally operated;

(8) release from detention or confinement;

(9) an escape from confinement;

(10) a pardon, reprieve, commutation of sentence, or other change in a sentence, including a change ordered by a court;

(11) judgment of an appellate court that modifies or reverses the lower court decision;

(12) order of a court in a collateral proceeding that affects a person's conviction, sentence, or confinement, including any expungement or annulment of arrests or convictions pursuant to state statute; and

(13) any other event arising out of or occurring during the course of criminal justice proceedings declared to be reportable by rule or regulation of the director.

(b) There is hereby established a criminal justice information system central repository for the collection, storage, and dissemination of criminal history record information. The central repository shall be operated by the Kansas bureau of investigation under the administrative control of the director.

(c) Every criminal justice agency shall report criminal history record information, whether collected manually or by means of an automated system, to the central repository, in accordance with rules and regulations adopted pursuant to this act.

(d) Reporting methods may include: (1) Submittal of criminal history record information by a criminal justice agency directly to the central repository;

(2) if the information can readily be collected and reported through the court system, submittal to the central repository by the administrative office of the courts; or

(3) if the information can readily be collected and reported through criminal justice agencies that are part of a geographically based information system, submittal to the central repository by such agencies.

(e) Nothing in this section shall prevent a criminal justice agency from maintaining more detailed information than is required to be reported to the central repository.

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However, the dissemination of any such criminal history record information is governed by the provisions of this act.

(f) The director may determine, by rule and regulation, the reportable events to be reported by each criminal justice agency, in order to avoid duplication in reporting.

History: L. 1978, ch. 118, § 5; March 1.

22-4706. Agreements between central repository and criminal justice agencies. The director, pursuant to the rules and regulations adopted, shall develop agreements between the central repository and criminal justice agencies pertaining to:

(a) The method by which the agency will report information, including the method of identifying an offender in a manner that permits other criminal justice agencies to locate the offender at any stage in the criminal justice system, the time of reporting, the specific data to be reported by the agency, and the place of reporting;

(b) the services to be provided to the agency by the central repository;

(c) the conditions and limitations upon the dissemination of criminal history record information by the agency;

(d) the maintenance of security in all transactions between the central repository and the agency;

(e) the method of complying with the right of a person to inspect, challenge, and correct criminal history record information maintained by the agency;

(f) audit requirements to ensure the accuracy of all information reported or disseminated;

(g) the timetable for the implementation of the agreement;

(h) sanctions for failure of the agency to comply with any of the provisions of this act, including the revocation of any agreement between the agency and the central repository and appropriate judicial or administrative proceedings to enforce compliance; and

(i) other provisions that the director may deem necessary.

History: L. 1978, ch. 118, § 6; March 1.

22-4707. Restrictions on dissemination of criminal history record information; penalties. (a) A criminal justice agency and the central repository may not disseminate criminal history record information except in strict accordance with laws including applicable rules and regulations adopted pursuant to this act. A criminal justice agency may not request such information from the central repository or another criminal justice agency unless it has a legitimate need for the information.

(b) Noncriminal justice persons and agencies may receive criminal history record information for such purposes and under such conditions as may be authorized by law, including rules and regulations adopted pursuant to this act.

(c) The central repository or a criminal justice agency may not subvert the requirements of this section by merely confirming or denying the existence or nonexistence of criminal history record information relating to a person.

(d) In addition to any other remedy or penalty authorized by law, any individual violating or causing a violation of the provisions of this section shall be deemed guilty of a class A misdemeanor. If the person is employed or licensed by a state or local government agency, a conviction shall constitute good cause to terminate employment or to revoke or suspend a license.

History: L. 1978, ch. 118, § 7; March 1.

CASE ANNOTATIONS

1. Mentioned in holding 22-4712 inapplicable to district court records of criminal proceedings. Stephens v. Van Arsdale, 227 K. 676, 685, 608 P.2d 972.

22-4708. Disclosure of status of pending investigations and proceedings. Notwithstanding the provisions of the preceding section, a criminal justice agency may disclose the status of a pending investigation of a named person, or the status of a pending proceeding in the criminal justice system, if the request for information is reasonably contemporaneous with the event to which the information relates and the disclosure is otherwise appropriate.

History: L. 1978, ch. 118, § 8; March 1.

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22-4709. Inspection of record information on individuals. (a) Subject to the provisions of this act and rules and regulations adopted pursuant thereto, any person may inspect and challenge criminal history record information maintained by a criminal justice agency concerning themselves. A person's attorney may inspect such information if such attorney satisfactorily establishes his or her identity and presents a written authorization from his or her client.

(b) Nothing in this section requires a criminal justice agency to make a copy of any information or allows a person to remove any document for the purpose of making a copy of it. A person having the right of inspection may make notes of the information.

History: L. 1978, ch. 118, § 9; March 1.

22-4710. Unlawful for employers to require certain acts; penalties. (a) It is unlawful for any employer or prospective employer to require a person to inspect or challenge any criminal history record information relating to that person for the purpose of obtaining a copy of the person's record in order to qualify for employment.

(b) Any person violating the provisions of this section shall be deemed guilty of a class A misdemeanor.

History: L. 1978, ch. 118, § 10; March 1.

22-4711. Prior record information; rights and duties. Criminal history record information which was recorded prior to the effective date of this act is subject to the right of access and challenge in accordance with this act. However, the duty of a criminal justice agency is to make a reasonable search for such information. There is no duty to provide access to criminal history record information that cannot be located after a reasonable search.

History: L. 1978, ch. 118, § 11; March 1.

22-4712. Disclosure of arrests not resulting in conviction; limitations. (1) Whenever any person has been arrested for the violation of any ordinance of any city, the resolution of any county in this state or any law of this state and the charges have been dismissed or the person has been found not guilty by a court or jury or where the person arrested has been released pursuant to K.S.A. 22-2406, all records of such arrest, including fingerprints and photographs of the person shall be confidential information. Such information shall not be disclosed by any officer or employee of a criminal justice agency, as defined in K.S.A. 1979 Supp. 22-4701, to anyone other than another officer or employee of such a criminal justice agency, a prosecuting attorney or to the person arrested or his or her attorney.

(2) Except in any application for employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01; or with a criminal justice agency, as defined by K.S.A. 1979 Supp. 22-4701, any person so arrested may state in any application for employment, license or other civil right or privilege, or any appearance as a witness, that he or she has never been arrested for such violation.

History: L. 1979, ch. 95, § 1; July 1.

CASE ANNOTATIONS

1. Section construed as part of 22-4701 *et seq.*; inapplicable to district court records of criminal proceedings. Stephens v. Van Arsdale, 227 K. 676, 677, 678, 683, 684, 685, 694, 608 P.2d 972.

Title 21, Article 46

21-4619. Expungement of certain convictions. (a) Except as provided in subsection (b), any person convicted in this state of a misdemeanor or a class D or E felony may petition the convicting court for the expungement of such conviction if two or more years have elapsed since the person: (1) Satisfied the sentence imposed; or (2) was discharged from probation, parole, conditional release or a suspended sentence.

(b) In the case of a conviction for a class A, B or C felony or any violation enumerated in subsection (a) of K.S.A. 1980 Supp. 8-285, and any amendments thereto, no person may petition for expungement until five or more years have elapsed since the person: (1) Satisfied the sentence imposed; or (2) was discharged from probation, parole, conditional release or a suspended sentence.

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(c) When a petition for expungement is filed, the court shall set a date for a hearing thereon and shall give notice thereof to the prosecuting attorney. The petition shall state: (1) the defendant's full name; (2) the full name of the defendant at the time of arrest and conviction, if different than (1); (3) the defendant's sex, race and date of birth; (4) the crime for which the defendant was convicted; (5) the date of the defendant's conviction; and (6) the identity of the convicting court. There shall be no docket fee for filing a petition pursuant to this section. All petitions for expungement shall be docketed in the original criminal action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas adult authority.

(d) At the hearing on the petition, the court shall order the petitioner's conviction expunged if the court finds:

(1) That the petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;

(2) that the circumstances and behavior of the petitioner warrant the expungement; and

(3) that the expungement is consistent with the public welfare.

(e) When the court has ordered a conviction expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the federal bureau of investigation, the Kansas bureau of investigation, the secretary of corrections and any other criminal justice agency who may have a record of the conviction. After the order of expungement is entered, the petitioner shall be treated as not having been convicted of the crime, except that:

(1) Upon conviction for any subsequent crime the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) in any application for employment: (A) as a detective with a private detective agency, as defined by K.S.A. 75-7b01; (B) as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01; (C) with a criminal justice agency, as defined by K.S.A. 1980 Supp. 22-4701 or (D) with an institution as defined in K.S.A. 1980 Supp. 76-12a01 of the department of social and rehabilitation services, the petitioner, if asked about previous convictions, must disclose that the conviction took place;

(3) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed;

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged; and

(5) upon commitment to the custody of the secretary of corrections, any previously expunged record in the possession of the secretary of corrections may be reinstated and the expungement disregarded, and the record continued for the purpose of the new commitment.

(f) Whenever a person is convicted of a crime, pleads guilty and pays a fine for a crime or is placed on parole or probation or is given a suspended sentence or conditional release, the person shall be informed of the ability to expunge the conviction.

(g) Subject to the disclosures required pursuant to subsection (e), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose conviction of a crime has been expunged under this statute may state that such person has never been convicted of such crime, but the expungement of a felony conviction does not relieve an individual of complying with any state or federal law relating to the use or possession of firearms by persons convicted of a felony.

(h) Whenever the record of any conviction has been expunged under the provisions of this section or K.S.A. 1980 Supp. 12-4516 or the statutory predecessor of such section, the custodian of the records of arrest, conviction and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

(1) The person whose record was expunged;

(2) a criminal justice agency, private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in con-

junction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 1980 Supp. 76-12a01, of the department of social and rehabilitation services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order; or

(6) a prosecuting attorney, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense.

History: L. 1978, ch. 120, § 28; L. 1979, ch. 90, § 7; L. 1980, ch. 102, § 2; L. 1980, ch. 103, § 1; July 1.

Source or prior law:
21-4616, 21-4617.

Cross References to Related Sections:
Expungement of violations of city ordinances, see 12-4516.
Nondisclosure of arrests not resulting in conviction, see 22-4712.

Law Review and Bar Journal References:
Discussed in "Survey of Kansas Law: Criminal Law and Procedure," Keith G. Meyer, 27 K.L.R. 391, 396, 397 (1979).

CASE ANNOTATIONS

1. Section not unconstitutional violation of freedom of the press or of the right to assert truth as a defense in libel or slander action. Stephens v. Van Arsdale, 227 K. 676, 677, 678, 685, 688, 689, 691, 693, 694, 696, 608 P.2d 972.

* * * * *

PROPOSED PERMANENT 1981 RULES AND REGULATIONS

ARTICLE 9 - DEFINITIONS

10-9-1. Definitions. As used in these regulations, the following words and phrases shall have the meanings ascribed to them herein.

(a) "Disposition" means information disclosing that criminal proceedings have been concluded, including information disclosing that a law enforcement officer has elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings and also disclosing the nature of the termination in the proceedings; or information disclosing that proceedings have been indefinitely postponed and also disclosing the reasons for such postponement. Dispositions shall include, but not be limited to, acquittal, not guilty by reason of insanity, charge dismissed, guilty plea, nolle prosequi, nolo contendere plea, convicted, deceased, dismissed - civil action, pardoned, mistrial - defendant discharged, placed on probation, paroled, or released from correctional supervision.

(b) "Conviction" means all pleas of guilty, nolo contendere, or finding of guilty by a court or jury.

(c) "Non-conviction" means all acquittals, dismissals and releases authorized pursuant to K.S.A. 22-2406 or that a prosecutor has elected not to commence criminal proceedings.

(d) "Pending proceeding" refers to that period of time between arrest and disposition.

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(e) "Direct access" means having the authority to access the criminal history record data base, whether by manual or automated means.

(f) "Criminal history record information" has the meaning ascribed to it at K.S.A. 1980 Supp. 22-4701(b). All information defined at K.A.R. 10-1-1(b),(c), and (d) is considered within this definition.

(Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp. 22-4705; effective _____ , 1981).

ARTICLE 10 - COLLECTION AND REPORTING

10-10-1. Accuracy and completeness. Prior to disseminating criminal history record information, a criminal justice agency shall make every reasonable effort to determine the accuracy of the record disseminated. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp. 22-4707; effective _____, 1981).

10-10-2. Obligation to report. All criminal justice agencies obligated to report criminal history record information to the central repository shall do so within sixty (60) days of the reportable event to which the information relates, unless otherwise specified by law. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp. 22-4705; effective _____, 1981).

10-10-3. Forms for reporting arrests. Agencies reporting arrests to the central repository shall use only forms provided by the Kansas bureau of investigation or Federal bureau of investigation. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp. 22-4705; effective _____, 1981).

10-10-4. Reporting of dispositions. District attorneys, county attorneys, city attorneys and special prosecutors shall report the disposition of all cases in which an arrest was made within his or her jurisdiction to the central repository, except in those cases where the disposition has been reported by another criminal justice agency. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp. 22-4705; effective _____, 1981).

ARTICLE 11 - SECURITY

10-11-1. Personnel security; direct access. Direct access to criminal history record information is prohibited except by employees of a criminal justice agency. Physical security of criminal history record information shall be maintained by a criminal justice agency by storing such information in a way as to prevent direct access by anyone not authorized in this section. In addition, reasonable steps shall be taken by a criminal justice agency to insure that criminal history record information will be secure from theft, sabotage, fire, wind, and other natural or man-made disasters. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp.22-4706; effective _____, 1981).

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10-11-2. Transmission of non-conviction criminal history record information. Except when necessary to protect human life, non-conviction criminal history record information shall not be transmitted by any means which may be lawfully intercepted by a person not authorized to have direct access to such information. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp.22-4707; effective _____, 1981).

ARTICLE 12 - DISSEMINATION

10-12-1. Dissemination of conviction records. Upon a written request by an individual, a criminal justice agency may provide any conviction information in its possession. All such requests for conviction records shall include as part of the written request the full legal name, sex, race and date of birth of the individual in question. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp.22-4707; effective _____, 1981).

10-12-2. Dissemination of criminal history record information. Criminal justice agencies may provide criminal history record information to the following:

(a) Other criminal justice agencies;

(b) Those authorized by court order or subpoena;

(Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp. 22-4707; effective _____, 1981).

10-12-3. Dissemination by Criminal Justice Information System employees. Persons employed as part of a criminal justice information system, which is not operated by a criminal justice agency, shall disseminate criminal history record information only to a criminal justice agency as defined in K.S.A. 1980 Supp. 22-4701. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp.22-4707; effective _____, 1980).

ARTICLE 13 - INSPECTION AND CHALLENGE

10-13-1. Right to review and challenge decisions. At the time of inspection, an individual shall be notified in writing of the right to challenge those decisions concerning the accuracy of the content of his or her record. Upon completion of any review at the local level, a review shall be granted, upon written request by the involved individual, before the director of the KBI or his or her authorized designee. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp.22-4709; effective _____, 1981).

10-13-2 Inspection and challenge. The inability of a criminal justice agency to locate a disposition shall not be reason for denying an individual's right of inspection and challenge on grounds that the record is incomplete. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp. 22-4709; effective _____, 1981).

ARTICLE 14 - AUDITING CRIMINAL JUSTICE AGENCIES

10-14-1. Logging of disseminations. All disseminations shall be logged, including disseminations made by radio transmission pursuant to K.A.R. 10-3-2 except that, radio transmissions of conviction data are not subject to this requirement. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp. 22-4706; effective , 1981).

10-14-2. Disclosure of dissemination log. Dissemination logs shall be confidential and released only to a criminal justice agency. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp. 22-4707; effective _____, 1981).

ARTICLE 15 - REPORTABLE EVENTS: DUPLICATION

10-15-1. Reportable events, duplication. No criminal justice agency shall knowingly provide a duplicate report of an event required by K.S.A. 1980 Supp. 22-4705. A criminal justice agency may fulfill its reporting responsibility by agreements with other criminal justice agencies. (Authorized by K.S.A. 1980 Supp. 22-4704; 22-4705; implementing K.S.A. 1980 Supp.22-4706; effective _____, 1981).

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	17.150(6) 17.147	X		X
2. Privacy and Security Council				
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	17.150			X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	17.150			X
3.12 Authorizes to Private Sector	17.150			X
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	17.150			X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	17.150			X
3.22 Authorizes to Private Sector	17.150			X
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	17.150			X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	17.150			X
3.32 Authorizes to Private Sector	17.150			X
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	17.150 61-874, 61-884	X		X
5. Right to Challenge				
6. Judicial Review of Challenged Information	17.150(5)			X
7. Purging Non-Conviction Information				
8. Purging Conviction Information				

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information	17.142			X
10. Sealing Conviction Information				
11. Removal of Disqualifications				
12. Right to State Non-Existence of Record				
13. Research Access	17.150			X
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	17.110 17.150(1)	X		X
14.2 Auditing Requirements	17.150(1)			X
14.3 Other Accuracy/Completeness Requirements				
15. Dedication				
16. Civil Remedies	61.882 17.157	X X		
17. Criminal Penalties	17.157	X		
18. Public Records	61.870	X		
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination	17.150(2)			X
22. Security				
22.1 Physical (Building) Security				
22.2 Administrative Security				
22.3 Computer Security				
23. Transaction Logs				
24. Training Employees	15.330 15A.070	X X		
25. Listing of Information Systems				
26. FOIA (Including CJI)	61.878	X		
27. FOIA (Excluding CJI)	61.878	X		
28. Central State Repository	17.140	X		

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Kentucky Revised Statutes Annotated

17.142 Segregation of criminal records

(1) Each law enforcement or other public agency in possession of arrest records, fingerprints, photographs, or other data whether in documentary or electronic form shall upon written request of the arrestee as provided herein segregate all records relating to the arrestee in its files in a file separate and apart from those of convicted persons, if the person who is the subject of the records:

(a) Is found innocent of the offense for which the records were made; or

(b) Has had all charges relating to the offense dismissed; or

(c) Has had all charges relating to the offense withdrawn.

(2) A person who has been arrested and then has come within the purview of subsection (1) of this section may apply to the court in which the case was tried, or in which it would have been tried in the event of a dismissal or withdrawal of charges, for segregation of the records in the case. Upon receipt of such application the court shall forthwith issue an order to all law enforcement agencies in possession of such records to segregate the records in accordance with the provisions of this section.

(3) Each law enforcement agency receiving an order to segregate records shall forthwith:

(a) Segregate the records in its possession in a file separate and apart from records of convicted persons;

(b) Notify all agencies with which it has shared the records or to which it has provided copies of the records to segregate records; and

(c) All records segregated pursuant to this section shall show disposition of the case.

HISTORY: 1980 c 127, eff. 7-15-80

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17.150. Reports by law enforcement officers and criminal justice agencies — Public inspection exemptions — Regulations — Information from the Court of Justice. — (1) Every sheriff, chief of police, coroner, jailer, prosecuting attorney, probation officer, parole officer; warden or superintendent of a prison, reformatory, correctional school, mental hospital or institution for the retarded; state police, state fire marshal, board of alcoholic beverage control; department for human resources; department of transportation; bureau of corrections; and every other person or criminal justice agency, except the Court of Justice, public or private, dealing with crimes or criminals or with delinquency or delinquents, when requested by the department, shall:

(a) Install and maintain records needed for reporting data required by the department.

(b) Report to the department as and when the department requests all data demanded by it except that such reports concerning a juvenile delinquent shall not reveal his or his parents' identity.

(c) Give the department or its accredited agent access for purpose of inspection.

(d) Cooperate with the department to the end that its duties may be properly performed.

(2) Intelligence and investigative reports maintained by criminal justice agencies are subject to public inspection providing prosecution is completed or a determination not to prosecute has been made. However, portions of such records may be withheld from inspection if such inspection would disclose:

(a) The name or identity of any confidential informant or information which may lead to the identity of any confidential informant;

(b) Information of a personal nature, the disclosure of which will not tend to advance a wholesome public interest or a legitimate private interest;

(c) Information which may endanger the life or physical safety of law enforcement personnel; or

(d) Information contained in such records to be used in a prospective law enforcement action.

(3) When a demand for the inspection of such records is refused by the custodian of the record, the burden shall be upon the custodian to justify the refusal of inspection with specificity. Exemptions provided by this section shall not be used by the custodian of the records to delay or impede the exercise of rights granted by this section.

(4) Centralized criminal history records are not subject to public inspection. Centralized criminal history records mean information on individuals collected and compiled by the department of justice from criminal justice agencies and maintained in a central location consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges and any disposition arising therefrom to include sentencing, correctional supervision and release. Such information is restricted to that recorded as the result of the initiation of criminal proceedings or any proceeding related thereto. Nothing in this

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subsection shall apply to documents maintained by criminal justice agencies which are the source of information collected by the department of justice. Criminal justice agencies shall retain such documents and no official thereof shall willfully conceal or destroy any record with intent to violate the provisions of this section.

(5) The provisions of KRS Chapter 61 dealing with administrative and judicial remedies for inspection of public records and penalties for violations thereof shall be applicable to this section.

(6) The secretary of justice shall adopt such regulations as are necessary to carry out the provisions of the criminal history record information system and to insure the accuracy of such information based upon recommendations submitted by the commissioner, bureau of state police.

(7) The administrative office of the courts may, upon suitable agreement between the chief justice and the secretary of justice, supply criminal justice information and data to the department. No information shall be solicited from a circuit clerk, justice or judge, court, or agency of the Court of Justice unless such solicitation or request for information is made pursuant to the agreement which may have been reached between the chief justice and the secretary of justice. (Enact. Acts 1968, ch. 128, § 4; 1974, ch. 74, Art. VI, § 31; 1976, ch. 191, § 5; 1976 (Ex. Sess.), ch. 14, § 5, effective January 2, 1978; 1978, ch. 61, § 1, effective June 17, 1978.)

Opinions of Attorney General. A request to the police department for records pertaining to the criminal history of a certain person which pertained only to the records of criminal prosecutions which had, as of the day of the request, been completed or in which a determination not to prosecute was made and did not pertain to information gathered for use in respective law enforcement action not yet instituted should have been honored under the Criminal History Records Act, KRS 17.110 through KRS 17.157 and the Open Records Act, KRS 61.870 through KRS 61.884. OAG 76-424.

All the records of the police department are subject to public inspection unless they are specifically exempted by a statute and there is no statute which exempts police accident reports from public inspection. OAG 76-478.

Since police arrest records do not contain information of a personal nature, a city police department cannot withhold inspection of a client's arrest record from an attorney. OAG 76-511.

A person has no privacy rights in criminal records. OAG 76-604.

A prospective employer may not be given a copy of the records pertaining to a prospective employe from the files of the centralized criminal history system since subsection (4) of this section provides that such records are not subject to public inspection; however, since the Open Records Law mandates the sharing of information among departments of state government when the exchange is serving a legitimate governmental need and since the Criminal History Act incorporates the provisions of the Open Records Law, a criminal history check on prospective state employes should be provided at the request of the department of personnel. OAG 76-604 modified by OAG 77-28.

A request for a criminal history check on a named individual by a prospective employer,

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	15:578 15:578.1			X X
2. Privacy and Security Council	15:578 15:578.1			X X
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	15:578:12			X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	4:1, 4:3(4) 15:578:12			X X
3.12 Authorizes to Private Sector				
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	15:578:12			X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	15:578:12			X
3.22 Authorizes to Private Sector				
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	15:578:12			X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	15:578:12			X
3.32 Authorizes to Private Sector				
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes	15:578:13			X
4.3 Right to Inspect and Obtain Copy				
5. Right to Challenge	15:578:13			X
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information	44:9 15:578.11			X X
8. Purging Conviction Information	15:578.11			X

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information				
11. Removal of Disqualifications	44:9			X
12. Right to State Non-Existence of Record				
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	15:579, 579.1			X
14.2 Auditing Requirements	15:578.3 15:579.3			X X
14.3 Other Accuracy/Completeness Requirements				
15. Dedication				
16. Civil Remedies	15:579.5			X
17. Criminal Penalties	44:9.D 15:579.5			X X
18. Public Records	44:1			X
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security				
22.1 Physical (Building) Security	15:578.14			X
22.2 Administrative Security	15:578.14			X
22.3 Computer Security	15:578.14			X
23. Transaction Logs				
24. Training Employees	15.578.2			X
25. Listing of Information Systems				
26. FOIA (Including CJI)	44:3(4)			X
27. FOIA (Excluding CJI)	44:3(4)			X
28. Central State Repository	15:577			X

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As noted below, House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session provided as follows:

"WHEREAS, Act No. 722 of the 1979 Regular Session involves the creation of two new state agencies in the area of criminal identification and information, the abolition of one agency, and the transfer of powers, duties, functions, and responsibilities among the agencies affected by the Act; and

"WHEREAS, the transfer of powers, duties, functions, and responsibilities in addition to the creation and abolition of state agencies directly affects citizens of the state of Louisiana, specifically, those persons whose jobs are directly involved, those persons who use or depend on the services provided by these agencies, and other state agencies that use the services provided; and

"WHEREAS, although the agencies involved in the transfer have had one year to prepare for such transfer, uncertainties still exist as to which agencies are affected and the manner of their involvement; and

"WHEREAS, services provided by the state should be transferred in an orderly fashion so as to insure uninterrupted service to the citizens of Louisiana, and the agencies involved in this particular transfer are not yet in a position to accomplish an orderly transfer.

"THEREFORE, BE IT RESOLVED by the House of Representatives of the Legislature of Louisiana, the Senate thereof concurring, that the provisions of Act No. 722 of the 1979 Regular Session are hereby suspended in their entirety until September 1, 1981.

"BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the chief administrative officer of the following agencies: the Louisiana Commission of Law Enforcement and Administration of Criminal Justice, the Bureau of Criminal Identification, the Department of Public Safety, the Office of State Police, and the Louisiana Criminal Justice Information System."

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Title 15, Chapter 6

PART I. Louisiana Criminal Justice Information System

§ 575. Legislative findings and objectives

The legislature hereby finds and declares that:

(1) The improvement of public safety and sound law enforcement and administration of criminal justice requires the complete and timely collection, processing, and dissemination of available information on crime, offenders, and the operations of the criminal justice system through a centralized system.

(2) It is in the public interest that to the greatest extent possible, government agencies at all levels concerned with the detection, apprehension, prosecution, sentencing, confinement and rehabilitation of criminal offenders share among themselves available information relating to such offenders.

(3) Available computer and communications technology now enables the coordination, collection, storage and dissemination of relevant information heretofore dispersed in separate files throughout the state.

(4) The reduction of crime, the protection of citizens and enforcement officers, and the need to improve the efficiency of the criminal justice system mandates the development and operation of a computer-based criminal justice information system in Louisiana.

(5) The study of crime, criminal justice system methods, operations, and procedures, the planning and development of effective programs, and the development and enactment of effective legislation requires the availability of meaningful statistics on crime and delinquency, offender careers, and criminal justice system activities throughout Louisiana and the nation.

(6) The inaccurate collection and storage, unauthorized dissemination, alteration or destruction, and other misuse of criminal history records requires the need for safeguards on personal privacy and the integrity of official files.

(7) The proper and effective administration and control of the operations of a statewide system of records and information requires the active assistance of an advisory council of participating agencies.

Acts 1979, No. 722, § 1, eff. July 1, 1980.

Text effective September 1, 1981. For text effective until September 1, 1981, see Part I, ante.

Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

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Title of Act:

An Act to amend and reenact Part I of Chapter 6 of Title 15 of the Louisiana Revised Statutes of 1950; to amend and reenact Subsection B of Section 408, to amend Subsection F of Section 409 by adding thereto a new Paragraph to be designated as R.S. 36:409(F)(4), and to amend said Section 409 by adding thereto a new Subsection, to be designated as Subsection G thereof, all of Title 36 of the Louisiana Revised Statutes of 1950; to repeal Part II of Chapter 6 of Title 15 of the Louisiana Revised Statutes of 1950, all relative to the creation and organization of the Bureau of Criminal Information, the abolishment of the Bureau of Criminal Identification and transfer of powers, duties, functions and responsibilities of said bureau to the Department of Public Safety, the creation of the Louisiana Criminal Information Advisory Council, and otherwise to provide with respect thereto. Acts 1979, No. 722.

Cross References

Commission on Law Enforcement and the Administration of Criminal Justice, see R.S. 15:1201 et seq.

Records of law enforcement agencies, see R.S. 44:3.

United States Code Annotated

Criminal history information, confidentiality, see 42 U.S.C.A. § 3789g.

Federal agency records, public access, see 5 U.S.C.A. § 552.

§ 576. Definitions

As used in this Part:

(1) The term "bureau" means the Louisiana Bureau of Criminal Identification and Information.

(2) The term "advisory council" means the Louisiana Criminal Information Advisory Council.

(3) The terms "criminal history record" or "criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, bills of information, or any formal criminal charges, and any disposition arising therefrom, including sentencing, correctional supervision, and release. The term does not include intelligence or investigatory purposes, nor does it include any identification information which does not indicate involvement of the individual in the criminal justice system.

(4) The term "criminal justice agency" means any government agency, or subunit thereof, or private agency which, through statutory authorization or a legal formal agreement with a governmental unit or agency has the power of investigation, arrest, detention, prosecution, adjudication, treatment, supervision, rehabilitation or release of persons suspected, charged, or convicted of a crime; or which collects, stores, processes, transmits or disseminates criminal history record or crime information.

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(5) The term "criminal justice system" means that body of agencies at the federal, state or local level, which may legally arrest, detain, prosecute, adjudicate, treat, supervise, rehabilitate or release, or collect, store, process, transmit, or disseminate criminal history record or crime information.

(6) The term "criminal justice information system" means all agencies, procedures, mechanisms, media, and forms as well as the information itself which are or become involved in the origination, collection, transmittal, storage, retrieval, and dissemination of information related to offenses or offenders in Louisiana.

Acts 1979, No. 722, § 1, eff. July 1, 1980.

Text effective September 1, 1981. For text effective until September 1, 1981, see Part I, ante.

Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

§ 577. Bureau of criminal identification and information; creation and organization

A. There is hereby created within the Department of Public Safety as a part of the office of state police, the Louisiana Bureau of Criminal Identification and Information. The bureau shall be administered by the deputy secretary who shall employ qualified commissioned officers of the state police to supervise the activities of the bureau under such terms and conditions as he may direct. The deputy secretary may appoint such other employees and employ such consultants as he deems necessary for the efficient operation of the bureau. The Louisiana Bureau of Criminal Identification and Information shall combine and assume the functions, powers and duties of the Bureau of Identification which prior to the effective date of this Section operated as a part of the office of state police and of the Louisiana Criminal Justice Information System which prior to the effective date of this Section operated as a section of the Commission on Law Enforcement and Administration of Criminal Justice. There is hereby transferred to the bureau from the Louisiana Criminal Justice Information System to be employed, used, and expended in connection with its duties, powers, and functions, the equipment and records being used or held in connection with such functions, the personnel employed in connection with such functions, and the unexpended funds available or to be made available in connection with such functions.

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B. Within the bureau, the following sections are hereby established:

(1) Criminal Records and Identification Section.

(2) Field Services and Quality Assurance Section.

(3) Criminal Statistics, Research and Analysis Section.

The bureau may establish such units within each section as are necessary to carry out the provisions of this Part.

C. All data processing and related communications needs of the bureau shall be provided by the Data Processing Center and other facilities of the Department of Public Safety unless otherwise agreed by the deputy secretary.

Acts 1979, No. 722, § 1, eff. July 1, 1980.

Text effective September 1, 1981. For text effective until September 1, 1981, see Part I, ante.

Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

History and Source of Law

As enacted by Acts 1979, No. 722, § 1, the heading for this section read: "Bureau of criminal information; creation and organization". The words "identification and" were added to the section heading on authority of R.S. 24:253.

§ 578. Functions, powers, and duties of the bureau; crime laboratory

A. The bureau shall perform the following functions:

(1) To establish and maintain a central repository of criminal history record information and to adopt regulations and procedures to prescribe the terms and conditions under which eligible individuals or agencies may gain access to such information.

(2) To establish and implement a uniform system for reporting criminal history record information from any state or local criminal justice agency.

(3) To adopt and promulgate regulations to protect the privacy and security of criminal history record information maintained by any state or local criminal justice agency.

(4) To establish, maintain, and regulate a modern system of telecommunication and data processing for the efficient collection, stor-

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age, and rapid transmission of criminal history record information and relevant statistics maintained by the bureau. To serve qualified agencies concerned with the administration of criminal justice throughout the state.

(5) To establish a system of fingerprint identification and analysis for use in the maintenance of criminal history record information; to aid in official investigations by eligible agencies; and to establish identification where authorized by law.

(6) To establish a uniform system of crime delinquency statistical reports which shall detail the number and types of offenses including delinquent acts or status offenses known to public authorities, social and demographical characteristics of offenders, and the action taken by law enforcement, prosecutive, judicial, penal or correctional agencies or institutions, including any private criminal justice agency legally empowered or chartered to apprehend, treat, or incarcerate offenders and delinquents. Such system shall at minimum produce comparable statistics with the national uniform crime statistics of the United States Department of Justice. Nothing contained herein shall require or permit the collection and storage of individually identifiable criminal history or delinquency records of juveniles by the bureau, unless a juvenile is tried and convicted as an adult according to applicable law.

B. The bureau shall continue to maintain the scientific crime laboratory facilities formerly maintained by the State Bureau of Criminal Identification. Upon request the bureau shall assist any sheriff, or chief police officer, or any governmental unit to do the following:

(1) Establish local identification and records system.

(2) Investigate the circumstances of any crime and the identification, apprehension, and conviction of the perpetrator or perpetrators of any crime, and for this purpose may detail any employee or employees of the bureau for any length of time the deputy secretary may deem fit; and

(3) Without request the deputy secretary may detail any employee or employees, for any length of time which he may deem fit, to investigate any crime within the state, for the purpose of identifying, apprehending, and convicting the perpetrator or perpetrators.

C. The Bureau shall also provide to the Louisiana Commission of Law Enforcement and Administration of Criminal Justice, on or before March 15 of each year, parish level statistics collected and tabulated from the preceding calendar year's Uniform Crime Reporting System.

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D. For the purpose of expediting local, state, national, and international efforts in the detection and apprehension of criminals, the bureau may operate and coordinate all communication systems which may be required in the normal conduct of its duties.

Acts 1979, No. 722, § 1, eff. July 1, 1980.

Text effective September 1, 1981. For text effective until September 1, 1981, see Part I, ante.

Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

§ 578.1. Rules and regulations

The bureau shall issue rules and regulations, consistent with United States Department of Justice requirements governing the maintenance of privacy and security of criminal history records, governing access to and use of records maintained by the central repository; governing restrictions to access and use by authorized agencies or individuals of any state owned or operated system of communication utilized for transmitting criminal history record information to or from the bureau, and governing the purging of any information maintained by the bureau as permitted by law.

Acts 1979, No. 722, § 1, eff. July 1, 1980.

Text effective September 1, 1981. For text effective until September 1, 1981, see Part I, ante.

Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

§ 578.2. Forms; procedures; training; assistance

The bureau shall develop, print and distribute forms and/or related procedures and regulations for the collection of any information or statistics which it is empowered to obtain to insure the correct reporting of data to the bureau. The bureau shall provide necessary technical assistance and training to all eligible reporting agencies in the appropriate procedures for completion of all forms and for submission of all information or statistics which the bureau may require. Upon request, the deputy secretary may direct employees or agents of

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the bureau to assist any criminal justice agency to establish a local system of identification and records management.

Acts 1979, No. 722, § 1, eff. July 1, 1980.

Text effective September 1, 1981. For text effective until September 1, 1981, see Part I, ante.

Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

§ 578.3. Authorized audits and investigations

With the written authorization of the deputy secretary, any employee or agent of the bureau, for purpose of audit or investigation of violations of any provisions herein, or any official rule or regulation of the bureau, shall be granted access by any public or private criminal justice agency collecting, processing, storing or maintaining any documents, or automated, microfilmed or manual records containing, or which may reasonably be expected to be used to substantiate and verify, any information or statistics the bureau is empowered to require from such public or private criminal justice agency. Upon written authorization of the deputy secretary, any employee or agent of the bureau may enter any institution to which persons have been committed, who have been convicted of crime, or declared to be criminally insane or to be feeble-minded delinquents, to take or cause to be taken fingerprints or photographs or to make investigation relative to any person confined therein, for the purpose of obtaining information which will lead to the identification of criminals.

Acts 1979, No. 722, § 1, eff. July 1, 1980.

Text effective September 1, 1981. For text effective until September 1, 1981, see Part I, ante.

Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

Cross References

Criminalistics laboratories, see R.S. 40:2261 et seq.
Evidence from criminalistic laboratories, see R.S. 15:499 et seq.

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§ 578.4. Civil identification files

The bureau may accept and file the names, fingerprints, photographs, and other personal identification data submitted to local criminal justice agencies by the individuals or submitted by parents on behalf of their children for the purpose of securing a more certain and easy identification in case of death, injury, loss of memory, or change of appearance. Upon the application of a person identified under the provisions of this Section to the local criminal justice agency, all data received under this Section with relation to him shall be surrendered to the requesting criminal justice agency.

Acts 1979, No. 722, § 1, eff. July 1, 1980.

Text effective September 1, 1981. For text effective until September 1, 1981, see Part I, ante.

Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

§ 578.5. Transmission of information

The bureau may transmit any information in its possession which the deputy secretary shall designate, to any person or agency eligible to receive it under any provision of this Part. For those purposes, the bureau shall operate and coordinate a modern system of communications which may be required in the normal conduct of its duties.

Acts 1979, No. 722, § 1, eff. July 1, 1980.

Text effective September 1, 1981. For text effective until September 1, 1981, see Part I, ante.

Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

§ 578.6. Cooperation with federal and other state agencies

The bureau shall cooperate with the United States Department of Justice and other federal criminal justice agencies and with similar agencies in other states and cities toward developing a compre-

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hensive state, interstate, national, and international system of criminal information, identification, investigation, records and statistics.

Acts 1979, No. 722, § 1, eff. July 1, 1980.

Text effective September 1, 1981. For text effective until September 1, 1981 see Part I, ante.

Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

§ 578.7. Admissibility of bureau records in evidence

Any original record including fingerprints, pictures, photographs or other documents or data, or any copy thereof, when certified by the deputy secretary or his authorized representative, shall be admissible as evidence in all criminal cases in courts of this state. Any certified record or copy thereof, received by the court shall be received as prima facie proof of its contents, proper and accurate collection and custody, provided when the record is presented for admission into evidence, it is accompanied by a statement signed by the deputy secretary or his authorized representative which specifies:

(1) The date on which the record was received by the bureau.

(2) The agency of origin of each record.

(3) The nature or type of record received and by what method of transfer.

(4) The date the bureau compiles the record for the purpose of evidence.

(5) The name of the bureau employee who prepares the record for admission as evidence.

Acts 1979, No. 722, § 1, eff. July 1, 1980.

Text effective September 1, 1981. For text effective until September 1, 1981, see Part I, ante.

Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

Cross References

Evidence from criminalistics laboratories, see R.S. 15:490 et seq.

§ 578.8. Publication fees

The bureau may, except for copies required by the secretary of state, the legislature, the office of the governor, and other Louisiana criminal justice agencies, establish a fee of not to exceed ten dollars for each publication it prepares and furnishes to the public. Subject to the exceptions contained in Article VII, Section 9(A) of the Louisiana Constitution of 1974, all funds collected by the bureau from every source shall be paid into the state treasury and shall be credited to the Bond Security and Redemption Fund. Out of the funds remaining in the Bond Security and Redemption Fund after a sufficient amount is allocated from that fund to pay all obligations secured by the full faith and credit of the state which become due and payable within any fiscal year, the treasurer shall, prior to placing such remaining funds in the state general fund, pay into a special fund, which is hereby created in the state treasury and designated as the Bureau Fund, an amount equal to the total amount of funds paid into the treasury by the bureau.

The monies in the Bureau Fund shall be used solely to supplement the regular printing expenses of the bureau and for the purposes set forth in R.S. 15:578.13, and in the amounts appropriated each year to the bureau by the legislature.

Acts 1979, No. 722, § 1, eff. July 1, 1980.

Text effective September 1, 1981. For text effective until September 1, 1981 see Part I, ante.

Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

§ 578.9. Approval of criminal justice information plans

The bureau shall prepare a general plan for the development of criminal justice information systems statewide, setting forth applicable operating and performance standards and interface requirements for any regional or multijurisdictional system involving the transfer of criminal history record information between criminal justice agencies in Louisiana. The bureau shall review and approve all plans and agreements among any parties to regional or multijurisdictional

criminal justice information systems to ensure conformance with the state general plan and applicable interface requirements set forth therein.

Acts 1979, No. 722, § 1, eff. July 1, 1980.

Text effective September 1, 1981. For text effective until September 1, 1981, see Part I, ante.

Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

Cross References

Information system plans, approval requirement, see R.S. 15:1221.

§ 578.10. Research; publications; and reports

The bureau shall undertake research and studies relevant to the problems of crime and violence in the state, relevant to the extent and nature of delinquency, and relevant to the operations of the criminal justice system and the manner in which offenders are processed and resources expended. The bureau shall prepare for publication such statistics and other useful information as to provide assistance and guidance to criminal justice agencies and officials, legislators, and the executive branch. Annually the bureau shall present a report on or before July 1st, to the governor, the legislature and to the public detailing the nature and scope of offenses, offenders, and criminal justice activities and resources in Louisiana with comparisons to available national statistics for the previous calendar year. Upon request from the governor, the bureau shall undertake special research projects for which it is capable by virtue of its functions and within the budgetary constraints.

Acts 1979, No. 722, § 1, eff. July 1, 1980.

Text effective September 1, 1981. For text effective until September 1, 1981, see Part I, ante.

Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

§ 578.11. Authority to purge records of the central repository

Except for the provisions of R.S. 44:9, no records of the bureau may be permanently destroyed until five years after the person iden-

tified is known or reasonably believed to be dead. Upon the advice of the council and upon the official issuance of appropriate rules and regulations, the bureau may retire or remove from active dissemination to eligible agencies records of any individual beyond the age of sixty, who has had no reported criminal arrest for a period of fifteen years from the last reported official release from the criminal justice system.

Acts 1979, No. 722, § 1, eff. July 1, 1980.

Text effective September 1, 1981. For text effective until September 1, 1981, see Part I, ante.

Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

§ 578.12. Duty to provide information

The bureau shall make available upon request, or at such other times as the deputy secretary shall designate, to any eligible criminal justice agency and the Louisiana Department of Health and Human Resources, any information contained in the criminal history record and identification files of the bureau. The bureau in accordance with its powers to regulate and to enforce provisions herein may further restrict those agencies eligible to receive information. For the purposes in this Section, the bureau shall employ such methods and procedures and shall observe such duty hours as to provide information upon request within forty-eight hours from its receipt.

Acts 1979, No. 722, § 1, eff. July 1, 1980.

Text effective September 1, 1981. For text effective until September 1, 1981, see Part I, ante.

Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

§ 578.13. Right of individual access

The bureau shall adopt rules and regulations which provide a means for any individual or his authorized representative if he is physically incapable of appearing at the bureau, to view, make notes, and administratively challenge the accuracy and contents of his per-

sonal criminal history information record and to seek corrections. The bureau may levy a reasonable fee not to exceed ten dollars for this purpose, which fees shall be collected by the bureau, paid into the state treasury and credited to the special fund, and appropriated to the bureau all in accordance with the provisions of R.S. 15:578.6 and shall be used by the bureau to supplement normal operating expenses and to expand the services which the bureau is required to furnish under the provisions of this Part.

Acts 1979, No. 722, § 1, eff. July 1, 1980.

Text effective September 1, 1981. For text effective until September 1, 1981, see Part I, ante.

Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

Cross References

Records of investigative and law enforcement agencies, see R.S. 44:3.

United States Code Annotated

Federal agency records, public access, see 5 U.S.C.A. § 552.

§ 578.14. Duty to maintain security

The bureau shall adopt rules and regulations which shall establish necessary control over any data processing or telecommunication, system, facilities and personnel recruitment and such processing or communication related assignment policies of the department as become necessary to ensure compliance with all applicable security standards at the state and national level for storage and transmission of criminal history record information. To the maximum extent feasible, the bureau shall regulate through the design, implementation, and operation of the criminal justice information system the privacy and security of information contained herein.

Acts 1979, No. 722, § 1, eff. July 1, 1980.

Text effective September 1, 1981. For text effective until September 1, 1981, see Part I, ante.

Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

Cross References

Records of investigative and law enforcement agencies, see R.S. 44:3.

United States Code Annotated

Confidentiality of criminal history information, see 42 U.S.C.A. § 3789g.

§ 578.15. Obtaining and filing fingerprint and identification data

The bureau shall obtain and file the name, fingerprints, description, photographs, and any other pertinent identifying data as the deputy secretary deems necessary, of any person who:

(1) Has been or is hereafter arrested, formally indicted, or taken into custody in this state:

(a) For any offense which is a felony or misdemeanor under any state statute;

(b) For any violation of any ordinance which the bureau shall determine to be substantially related to or the equivalent of any offense described under state law as a felony offense;

(c) For any other offense which the deputy secretary may designate;

(2) Is or becomes confined to any prison, penal institution, correctional facility or institution for the criminally insane;

(3) After death, has become a human corpse which is unidentified or involved in any autopsy or inquest by a coroner;

(4) Is a fugitive from justice;

(5) Is or has been an habit offender.

Acts 1979, No. 722, § 1, eff. July 1980.

Text effective September 1, 1981. For text effective until September 1, 1981, see Part I, ante.

Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

§ 579. Submission of information; statistics; data

It shall be the obligation of every criminal justice agency to collect and submit the name, fingerprints, description, photographs, and other identifying data on persons lawfully arrested, indicted, or taken into custody in this state as required by the bureau with respect to all

felonies and misdemeanors and as otherwise described in R.S. 15:578.15. Upon notification, every criminal justice agency, coroner, correctional facility, prison, penal institution, or institution for the criminally insane, or private criminal justice agency lawfully empowered to perform any arrest, detention, treatment, or supervision, or any official function on behalf of the criminal justice system shall collect and report to the bureau in such manner as prescribed, any statistics, reports, lists of stolen property and fugitives, and criminal history records, or any other information the deputy secretary may require under authority of any provision of this Part, or rule, or regulation issued pursuant thereto. In addition, each coroner shall transmit to the bureau all statistics and information as prescribed, regarding autopsies performed, inquests held, and verdicts rendered.

Acts 1979, No. 722, § 1, eff. July 1, 1980.

Text effective September 1, 1981. For text effective until September 1, 1981, see Part I, ante.

Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

Cross References

Juveniles, fingerprints and photographs, see LSA–C.J.P. art. 36.

§ 579.1. Submission of fingerprints and identification data

Each law enforcement agency empowered to arrest or take into custody any individual described in R.S. 15:578.15 shall obtain and forward to the bureau two sets of fingerprints and other identification data as required by the bureau within seventy-two hours after arrest and booking; however, this period may be extended to cover any intervening official holiday or weekend.

Acts 1979, No. 722, § 1, eff. July 1, 1980.

Text effective September 1, 1981. For text effective until September 1, 1981, see Part I, ante.

Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

§ 579.2. Prohibition against destruction of records

Notwithstanding the provisions of Articles 893 and 894 of the Code of Criminal Procedure and R.S. 40:983 and except in accordance with the provisions set forth in R.S. 44:9, no judge or other official shall order the expungement, alteration, or destruction of any record of the bureau or of any agency subject to reporting requirements of the bureau.

Acts 1979, No. 722, § 1, eff. July 1, 1980.

Text effective September 1, 1981. For text effective until September 1, 1981, see Part I, ante.

Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

§ 579.3. Access to records

Each criminal justice agency subject to reporting requirements of the bureau shall, upon request by any authorized agent of the bureau, provide reasonable access to any record of such agency for the purpose of audit or to substantiate the accuracy of any record or statistics which the bureau is empowered to collect.

Acts 1979, No. 722, § 1, eff. July 1, 1980.

Text effective September 1, 1981. For text effective until September 1, 1981, see Part I, ante.

Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

United States Code Annotated

Federal agency records, public access, see 5 U.S.C.A. § 552.

§ 579.4. Duty to abide by regulations

Each agency subject to reporting requirements of the bureau shall abide by all rules and regulations adopted by the bureau pursuant to its authority.

Acts 1979, No. 722, § 1, eff. July 1, 1980.

Text effective September 1, 1981. For text effective until September 1, 1981, see Part I, ante.

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Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

§ 579.5. Penalties

A. Any head of an agency subject to the provisions of this Part, who, after written notification by an authorized representative of the bureau, shall neglect or refuse to make any report or to do any act required by any provision of this Part shall be deemed guilty of nonfeasance in office and shall be subject to removal and/or a fine of not less than two thousand dollars nor more than five thousand dollars for each offense.

B. Any individual who shall acquire or distribute any criminal history record except as authorized by law and in accordance with applicable rules and regulations of the bureau shall be fined not less than five hundred nor more than one thousand dollars, and may be imprisoned for not more than one year with or without hard labor for each offense.

C. Any individual who transmits false information, withholds information, or prevents the transmission of information shall be fined not less than five hundred nor more than one thousand dollars, and may be imprisoned for not more than five years with or without hard labor for each offense.

D. In addition to any criminal penalties, the deputy secretary is empowered to make reasonable administrative sanctions as he deems appropriate against those agencies who fail to comply with the provisions of this Act. Such sanctions may include, but are not limited to, loss of access to equipment and files maintained by the bureau.

Acts 1979, No. 722, § 1, eff. July 1, 1980.

Text effective September 1, 1981. For text effective until September 1, 1981, see Part I, ante.

Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

§ 580. Establishment of Louisiana Criminal Information Advisory Council; composition; duties; and compensation

A. There is hereby created in the Department of Public Safety, the Louisiana Criminal Information Advisory Council within the office of state police. The advisory council shall consist of the following members:

(a) The deputy secretary.

(b) The secretary of the department of corrections.

(c) The attorney general.

(d) The executive director of the Louisiana Commission on Law Enforcement and Administration of Criminal Justice.

(e) Three judges or judicial representatives.

(f) Three district attorneys.

(g) Three sheriffs.

(h) Three municipal police chiefs.

(i) Two members of the House of Representatives.

(j) Two members of the Senate; and

(k) Three individuals at large who hold no public office.

The deputy secretary shall preside as chairman for the first term, members to select the chairman thereafter. Except for those members who serve ex officio, the governor shall appoint all other members. Each of the legislative and judicial members shall be selected from respective nominees submitted to the governor by the president of the senate and the speaker of the house and the chief justice of the supreme court. All appointed members shall serve at the pleasure of the governor. Each member may serve consecutive terms; however, no appointed member may serve beyond the term of office of the governor who appoints him. The members of the council shall receive no compensation but shall be paid their necessary and actual expenses incurred in connection with attendance at meetings of the council or on business for the council assigned by it.

B. The advisory council shall perform the duties set forth as follows:

(1) Advise the deputy secretary on matters pertaining to the development, operation, and maintenance of the bureau and the information systems it operates.

(2) Promote a spirit of cooperation and compliance to insure success of the program.

(3) Recommend rules and regulations to the deputy secretary as the bureau shall issue in accordance with this Part.

(4) Recommend topics for research and analysis to be undertaken by the bureau staff.

(5) Review and recommend any legislation necessary for the implementation, operation, and maintenance or improvement of the bureau; adopt policies and procedures to govern the conduct of meetings; prescribe the frequency of meetings; and to set forth a quorum.

C. In performance of its functions, the advisory council may use the services of the staff and facilities of the bureau subject to the approval of the deputy secretary.

Acts 1979, No. 722, § 1, eff. July 1, 1980.

Text effective September 1, 1981. For text effective until September 1, 1981, see Part I, ante.

Suspension

House Concurrent Resolution No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722 in their entirety until September 1, 1981.

§ 581. Vacated by reenactment of Part

* * * * *

TITLE 44

PUBLIC RECORDS AND RECORDERS

Chap. Sec.
5. State Archives and Records Commission [New] 401

CHAPTER 1. PUBLIC RECORDS

PART I. SCOPE

Sec.
8. Louisiana office building corporation, special provisions [New].
9. Records of violations of municipal ordinances and of state statutes classified as misdemeanors [New].
10. Confidential nature of documents and proceedings of judiciary commission [New].

PART II. GENERAL PROVISIONS

Sec.
40. Additional copies of records by microphotographic process; purchase of equipment; funds available for payment; copies of suit records [New].
41. Receiving and filing map, plat, etc. for record [New].
42. Microfilm records; sheriffs office [New].

PART I. SCOPE

Cross References

Court records, see LSA-C.C.P. art. 251.

Professional Engineers and Land Surveyors, State Board of Registration for, examination records, see R.S. 37:691.

Records accepted by State Mineral Board, exception to open meeting law, see R.S. 42:6.1.

§ 1. General definitions

A. (1) As used in this Chapter, the phrase "public body" means any branch, department, office, agency, board, commission, district, governing authority, political subdivision, or any committee, subcommittee, advisory board, or task force thereof, or any oth instrumentality of state, parish, or municipal government, including a public or quasi-public nonprofit corporation designated as an entity to perform a governmental or proprietary function.

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(2) All books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment, having been used, being in use, or prepared, possessed, or retained for use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which was conducted, transacted, or performed by or under the authority of the constitution or laws of this state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of this state, are "public records," except as otherwise provided in this Chapter or as otherwise specifically provided by law.

(3) As used in this Chapter, the word "custodian" means the public official or head of any public body having custody or control of a public record, or a representative specifically authorized by him to respond to requests to inspect any such public records.

B. Electrical well surveys produced from wells drilled in search of oil and gas located in established units and which are filed with the assistant secretary of the office of conservation shall be placed in the open files of the office of conservation. Any party or firm shall have the right to examine or reproduce, or both, at their own expense, copies of said survey, by photography or other means not injurious to said records. All other electric logs and other electronic surveys, other than seismic data, produced from wells drilled in search of oil and gas which are filed with the assistant secretary of the office [1] of conservation shall remain confidential upon the request of the owner so filing for periods as follows:

For wells shallower than fifteen thousand feet a period of one year, plus one additional year when evidence is submitted to the assistant secretary of the office of conservation that the owner of the log has a leasehold interest in the general area in which the well was drilled and the log produced; for wells fifteen thousand feet deep or deeper, a period of two years, plus two additional years when evidence is submitted to the assistant secretary of the office of conservation that the owner of the log has such an interest in the general area in which the well was drilled and the log produced; and for wells drilled in the offshore area, subsequent to July 1, 1977, regardless of depth, a period of two years from the filing of the log with the office of conservation, plus two additional years where evidence is submitted to the assistant secretary of the office of conservation that the owner of the log has such an interest in the general area in which the well was drilled and the log produced and has immediate plans to develop the said general area, unless a shorter period of confidentiality is specifically provided in the existing lease.

At the expiration of time in which any log or electronic surveys, other than seismic data, shall be held as confidential by the assistant secretary of the office of conservation as provided for above, said log or logs shall be placed in the open files of the office of conservation and any party or firm shall have the right to examine or reproduce, or both, at their own expense, copies of said log or electronic survey, other than seismic data, by photography or other means not injurious to said records.

Amended by Acts 1973, No. 135, § 1; Acts 1973, Ex.Sess., No. 4, § 1; Acts 1978, No. 686, § 1; Acts 1979, No. 691, § 1; Acts 1980, No. 248, § 1.

[1] In subsec. B, "office" was substituted for "department" on authority of R.S. 24:253.

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Section 2 of Acts 1978, No. 686 provides that: "The provisions of this Act shall not apply to any writings, records or other accounts that reflect the mental impressions, conclusions, opinions or theories of an attorney or an expert, obtained or prepared in anticipation of litigation or in preparation for trial."

1978 Amendment: Changed the section heading from "General definitions" to "Definitions" and rewrote subsection A, which had previously read: "All records, writings, accounts, letters and letter books, maps, drawings, memoranda and papers, and all copies or duplicates thereof, and all photographs or other similar reproductions of the same, having been used, being in use, or prepared for use in the conduct, transaction or performance of any business, transaction, work, duty or function which was conducted, transacted or performed by or under the authority of the Constitution or the laws of this state, or the ordinances or mandates or orders of any municipal or parish government or officer or any board or commission or office established or set up by the Constitution or the laws of this state, or concerning or relating to the receipt or payment of any money received or paid by or under the authority of the Constitution or the laws of this state are public records, subject to the provisions of this Chapter except as hereinafter provided."

1979 Amendment: Added "General" to the section heading; in the first paragraph of subsec. B inserted "and other electronic surveys, other than seismic data," and substituted "assistant secretary of the office of conservation" for "Commissioner of Conservation"; and rewrote the second and third paragraphs of subsec. B, which had provided:

"For wells shallower than fifteen thousand feet a period of one year, plus one additional year when evidence is submitted to the Commissioner of Conservation that the owner of the log has a leasehold interest in the general area in which the well was drilled and the log produced; for wells fifteen thousand deep or deeper, a period of two years, plus two additional years when evidence is submitted to the Commissioner of Conservation that the owner of the log has such an interest in the general area in which the well was drilled and the log produced; provided however that no release will be required of logs produced from wells drilled in the off-shore area.

"At the expiration of time in which any log or logs shall be held as confidential by the Commissioner of Conservation as provided for above said log or logs shall be placed in the open files of the Department of Conservation and any party or firm shall have the right to examine and/or reproduce, at their own expense, copies of said log or logs by photography or other means not injurious to said records."

1980 Amendment: In the first paragraph of subsec. B, added the first two sentences, concerning surveys placed in the open files of the office of conservation, added "other" before "electric logs"; and in the third paragraph of subsec. B, substituted "or reproduce, or both" for "and/or reproduce".

Cross References

Confidential records and documents in possession of state agencies, see R.S. 49:956(8).

Criminal history information, confidentiality, see 42 U.S.C.A. § 3789g.

Exemption of information furnished Department of Highways by contractors, see R.S. 48:255.1.

Exemption of State Sovereignty Commission records from provisions of Public Records Act, see R.S. 49:704.

Federal agency records, public access, see 5 U.S.C.A. § 552.

20. Privacy of individuals

Neither the city nor its employees had reasonable expectation of privacy against disclosure of public record containing names and addresses of city employees to person entitled to invoke Louisiana public records law (R.S. 44:1 et seq.), such as newspaper reporter. Aswell v. Lunt, App.1979, 375 So.2d 142, writ denied 378 So.2d 434.

The fact that a municipality or its employee labels the name or address of an employee as having been furnished to become a part of a confidential personnel record does not elevate the name or address to status of being a constitutionally protected private thing; the Public Records Law is not limited to records affecting only the public fisc but covers all records unless specifically excepted by statute, or unless the disclosure of information contained in the public record is information to which the employee has reasonable expectation of privacy such as personnel evaluation reports, disclosure of which might affect the employee's future employment or cause him embarrassment or humiliation. Webb v. City of Shreveport, App.1979, 371 So.2d 316, writ denied 374 So.2d 657.

City could be compelled under Public Records Law to reveal names and addresses of city's employees, except employees of police and fire departments, to a person who declared he was also acting on behalf of a labor union seeking to organize municipal employees since neither city nor its employees, excluding fire and police personnel, had reasonable expectation of privacy against disclosure of the names and addresses as contained on a computer tape. Id.

21. Actions, in general

In proceeding concerning whether either city or its employees had reasonable expectation of privacy against disclosure of public record containing names and addresses of city employees to person entitled to invoke Louisiana public records law (R.S. 44:1 et seq.), such as newspaper reporter, trial court did not abuse its discretion in refusing to stay proceedings below until judgment in controlling case became final and definitive, despite city's contention that judicial economy was not served by allowing litigation of same issues at different appellate levels. Aswell v. Lunt, App.1979, 375 So.2d 142, writ denied 378 So.2d 434.

22. Attorney fees

Where, in proceeding concerning whether city had reasonable expectation of privacy against disclosure of certain public record to newspaper reporter, city did not complain that error occurred in awarding attorney fees of $500 to reporter, and reporter contended that award should be increased because of time and efforts of his attorneys below and on appeal, but reporter testified that he had not discussed question of fees with his counsel or his employer and that he did not know whether he was expected to pay attorney fees, only amount of award was before Court of Appeal and there was no need to increase award for services rendered below and on appeal. Aswell v. Lunt, App.1979, 375 So.2d 142, writ denied 378 So.2d 434.

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§ 2. Records involved in legislative investigations

1. Inspection
Trial court properly denied defense counsel's request for log of parish sheriff's office, where counsel was not entitled to the log at time it was requested, State v. Edgecombe, Sup.1973, 275 So.2d 740, certiorari denied 94 S.Ct. 891, 414 U.S. 1075, 38 L.Ed.2d 482.

§ 3. Records of prosecutive, investigative, and law enforcement agencies

A. Nothing in this Chapter shall be construed to require disclosures of records, or the information contained therein, held by the offices of the attorney general, district attorneys, sheriffs, police departments, Department of Public Safety, marshals, investigators, correctional agencies, or intelligence agencies of the state, which records are:

(1) Records pertaining to pending criminal litigation or any criminal litigation which can be reasonably anticipated, until such litigation has been finally adjudicated or otherwise settled; or

(2) Records containing the identity of a confidential source of information or records which would tend to reveal the identity of a confidential source of information; or

(3) Records containing security procedures, investigative training information or aids, investigative techniques, investigative technical equipment or instructions on the use thereof, or internal security information; or

(4) The records of the arrest of a person until a final judgment of conviction or the acceptance of a plea of guilty by a court of competent jurisdiction. However, the records of the booking of a person as provided in Louisiana Code of Criminal Procedure Article 228, records of the issuance of a summons or citation, and records of the filing of a bill of information shall be a public record.

(5) Records containing the identity of an undercover police officer or records which would tend to reveal the identity of an undercover police officer; or

(6) Records concerning status offenders as defined in the Code of Juvenile Procedure.

B. All records, files, documents, and communications, and information contained therein, pertaining to or tending to impart the identity of any confidential source of information of any of the state officers, agencies, or departments mentioned in Paragraph A above, shall be privileged, and no court shall order the disclosure of same except on grounds of due process or constitutional law. No officer or employee of any of the officers, agencies, or departments mentioned in Paragraph A above shall disclose said privileged information or produce said privileged records, files, documents, or communications, except on a court order as provided above or with the written consent of the chief officer of the agency or department where he is employed or in which he holds office, and to this end said officer or employee shall be immune from contempt of court and from any and all other criminal penalties for compliance with this paragraph.

C. Whenever the same is necessary, judicial determination pertaining to compliance with this section or with constitutional law shall be made after a contradictory hearing as provided by law. An appeal by the state or an officer, agency, or department thereof shall be suspensive.

D. Nothing in this section shall be construed to prevent any and all prosecutive, investigative, and law enforcement agencies from having among themselves a free flow of information for the purpose of achieving coordinated and effective criminal justice.

Amended by Acts 1972, No. 448, § 1; Acts 1978, No. 313, § 1; Acts 1978, No. 686, § 1; Acts 1979, No. 336, § 1.

[1] The addition of the Department of Public Safety in 1978 (Act No. 313, § 1) was not specifically mentioned in the title of the Act.

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Section 2 of Acts 1978, No. 686 provides that: "The provisions of this Act shall not apply to any writings, records or other accounts that reflect the mental impressions, conclusions, opinions or theories of an attorney or an expert, obtained or prepared in anticipation of litigation or in preparation for trial."

1978 Amendments: Acts 1978, No. 313, § 1 added "or" to par. (3) of subsec. A and added par. (4) thereto. The 1978 Act also added "Department of Public Safety" to the introductory paragraph of subsec. A.

Acts 1978, No. 686, § 1 provides for the addition of paragraphs (4) and (5) to subsection A of R.S. 44:3. These provisions have been redesignated as paragraphs (5) and (6), respectively, pursuant to R.S. 24:253.

1979 Amendment: In amending pars. (4), (5), and (6), the 1979 Act made no change in pars. (5) or (6), but rewrote par. (4), which had provided:

"(4) Records of the arrest of a person, the issuance of a citation or a summons to a person, or the filing of a bill of information against a person, when the arrest, citation, summons, or bill of information did not result in a final judgment of conviction, or the acceptance of a plea by guilty by a court of competent jurisdiction; or"

Cross References

Criminal history information, confidentiality, see 42 U.S.C.A. § 3789g.

Legislative council, see R.S. 24:406.

Louisiana Bureau of Criminal Identification and Information, see R.S. 15:575 et seq.

Law Review Commentaries

Criminal discovery, James A. Roundtree, 33 La.L.Rev. 596 (1973).

Criminal discovery in Louisiana—defense is not entitled. 23 Loyola L.Rev. (La.) 440 (1977).

Evidence—work of appellate courts, 1976–1977. George W. Pugh and James R. McClelland, 38 La.L.Rev. 567 (1978).

Work of Louisiana appellate courts for 1975–1976 term: Evidence. George W. Pugh and James R. McClelland, 37 La.L.Rev. 575 (1977).

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½. Validity

Former 42 U.S.C.A. § 3771(b) (see, now, 42 U.S.C.A. § 3789g), which required Law Enforcement Assistance Administration to establish procedures concerning criminal history information, and implementing regulations issued by Louisiana commission on law enforcement and administration of criminal justice superseded state public records law in field of criminal history record information dissemination. Op.Atty. Gen., No. 77-1370, Dec. 14, 1977.

1. In general

Claim that city-parish constitutional charter preempted field pertaining to public inspection and examination of public records was without basis. Bartels v. Rousseel, App.1974, 303 So.2d 833. Writ denied 307 So.2d 372.

If city-parish charter provisions purported to constitute a general classification or definition of public records they would be void for conflict with Public Records Law. Id.

There is no requirement that records of municipal police department containing information known as "criminal history record information" be disseminated to public upon request, but only that such records be made available for public inspection during regular working hours of agency involved. Op.Atty. Gen., No. 77-1370, Dec. 14, 1977.

§ 9. Records of violations of municipal ordinances and of state statutes classified as misdemeanors

A. Any person who has been arrested for the violation of a municipal ordinance or for violation of a state statute which is classified as a misdemeanor may make a written motion to the district court for the parish in which he was arrested for expungement of the arrest record, if:

(1) The time limitation for the institution of prosecution on the offense has expired, and no prosecution has been instituted; or

(2) If prosecution has been instituted, and such proceedings have been finally disposed of by dismissal, sustaining of a motion to quash, or acquittal.

If the court finds that the mover is entitled to the relief sought, for either of the above reasons, it shall order all agencies and law enforcement offices having any record of the arrest, whether on microfilm, computer card or tape, or on any other photographic, electronic or mechanical method of storing data, to destroy any record of arrest, photograph, fingerprint or any other information of any and all kinds or descriptions. The court shall order such custodians of records to file a sworn affidavit to the effect that the records have been destroyed and that no notations or references have been retained in the agency's central repository which will or might lead to the inference that any record ever was on file with any agency or law enforcement office. The original of this affidavit shall be kept by the court so ordering same and a copy shall be retained by the affiant agency which said copy shall not be a public record and shall not be open for public inspection but rather shall be kept under lock and key and maintained only for internal record keeping purposes to preserve the integrity of said agency's files and shall not be used for any investigative purpose. This Subsection does not apply to arrests for a first or second violation of any ordinance or statute making criminal the driving of a motor vehicle while under the influence of alcoholic beverages or narcotic drugs, as denounced by R.S. 14:98.

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B. Any criminal court of record in which there was a nolle prosequi, an acquittal, or dismissal of a crime set forth above shall at the time of discharge of a person from its control, enter an order annulling, cancelling, or rescinding the record of arrest, and disposition, and further ordering the destruction of the arrest record and order of disposition. Upon the entry of such an order the person against whom the arrest has been entered shall be restored to all civil rights lost or suspended by virtue of the arrest, unless otherwise provided in this section, and shall be treated in all respects as not having been arrested.

C. Notwithstanding any other provision of this section to the contrary, the provisions of this section shall in no case be construed to effect in any way whatsoever the practices and procedures in effect on July 29, 1970, relating to the administration of the implied consent law.

D. Whoever violates any provisions of this section shall be punished by a fine of not more than two hundred fifty dollars or by imprisonment of not more than ninety days, or both, if the conviction is for a first violation; second and subsequent violations shall be punished by a fine of not more than five hundred dollars or imprisonment of six months, or both.

E. No court shall order the destruction of any record of the arrest and prosecution of any person convicted of a felony, including a conviction dismissed pursuant to Article 893 of the Code of Criminal Procedure.

Added by Acts 1970, No. 445, § 1. Amended by Acts 1972, No. 715, §§ 2, 3; Acts 1974, No. 531, § 1; Acts 1976, No. 678, § 1; Acts 1978, No. 570, § 1.

1978 Amendment: Added subsection E, concerning felony records.

Cross References

Criminal history information, confidentiality, see 42 U.S.C.A. § 3789g.

Louisiana Bureau of Criminal Identification and Information, authority to purge records, application of this section, see R.S. 15:578.11.

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	25-1541.4			X
2. Privacy and Security Council				
3. Dissemination Regulations				
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3.10 Authorizes to Criminal Justice Agencies	16-615			X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	16-615			X
3.12 Authorizes to Private Sector	16-615			X
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	16-613.1			X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	16-613.2			X
3.22 Authorizes to Private Sector	16-613.2			X
3.23 Prohibits to Criminal Justice Agencies				
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3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	16-613.1			X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	16-612.3.A 16-613.2			X X
3.32 Authorizes to Private Sector	16-612.3A 16-613.2			X X
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	16-620.1			X
5. Right to Challenge	16.620.2			X
6. Judicial Review of Challenged Information	16-620.4			X
7. Purging Non-Conviction Information				
8. Purging Conviction Information				

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information				
11. Removal of Disqualifications				
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13. Research Access	16-613.4			X
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	25-1544 25-1542.4			X X
14.2 Auditing Requirements				
14.3 Other Accuracy/Completeness Requirements				
15. Dedication				
16. Civil Remedies	25-1550			X
17. Criminal Penalties	16-619			X
18. Public Records	1-401	X		
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination	16-614			X
22. Security				
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22.3 Computer Security				
23. Transaction Logs	16-620.5			X
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)	1-401	X		
27. FOIA (Excluding CJI)	1-401 25-1631	X X		
28. Central State Repository	25-1541			X

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Maine Revised Statutes
Title 25

CHAPTER 193

STATE BUREAU OF IDENTIFICATION

New Sections
1550. Violations.

§ 1541. Commanding officer

1. Appointment. The Chief of the State Police shall appoint a person who has knowledge of the various standard identification systems and Maine court procedure to be commanding officer of the State Bureau of Identification, heretofore established within the Bureau of State Police.

2. Personnel. The Chief of the State Police may delegate members of the State Police to serve in the bureau upon request of the commanding officer. The commanding officer shall have the authority to hire such civilian personnel, subject to the Personnel Law and the approval of the Chief of the State Police, as he may deem necessary.

3. Cooperation with other bureaus. The commanding officer shall cooperate with similar bureaus in other states and with the national bureau in the Department of Justice in Washington, D. C. and he shall develop and carry on an interstate, national and international system of identification.

4. Rules and regulations. The commanding officer shall make and forward to all persons charged with any duty or responsibility under this section and sections 1542, 1544, 1547 and 1549; rules, regulations and forms for the taking, filing, preserving and distributing of fingerprints and other criminal history record information as provided in this chapter. Before becoming effective, such rules, regulations and forms are to be approved by the Attorney General.

5. Apparatus and materials. The Chief of the State Police shall supply such bureau with the necessary apparatus and materials for collecting, filing, preserving and distributing criminal history record information.

1975, c. 763, § 4.

1975 Amendment. Section repealed and replaced by c. 763.

1. In general

Where the Supreme Judicial Court was not furnished with transcript of hearing on defendants' motion to obtain transcript of criminal record of third party from bureau of identification or Federal Bureau of Investigation in prosecution for breaking, entering and larceny in nighttime, Court had no way of knowing whether any showing of materiality was made and therefore had no basis upon which to predicate finding of error. State v. Burnham (1976) Me., 350 A.2d 577.

Defendants, charged with breaking, entering and larceny in nighttime, had right to subpoena such records as may have existed in bureau of identification regarding criminal record of third party, to whom defendant, according to testimony of prosecution witness, had allegedly made certain statement. Id.

Where there was no showing in prosecution for breaking, entering and larceny in nighttime that State had in its possession any records from Federal Bureau of Investigation, such records were not discoverable in state court proceeding. Id.

§ 1542. Recording of fingerprints; photographs; palm prints

1. Fingerprints. Law enforcement officers or persons in charge of state correctional institutions under the general supervision, management and control of the Department of Mental Health and Corrections shall have the authority to take or cause to be taken, and shall take or cause to be taken, the fingerprints of any person:

A. In custody charged with the commission of a crime;

B. In custody charged with the commission of a juvenile offense;

C. In custody and believed to be a fugitive from justice;

D. Named in a search warrant which directs that such person's fingerprints, palm prints or photograph be taken;

E. Who dies while confined at a jail, police station or any facility operated by the Bureau of Corrections;

F. Who may have died by violence or by the action of chemical, thermal or electrical agents, or following abortion, or suddenly when not disabled by recognizable disease, or whose death is unexplained or unattended, if directed to do so by the Attorney General or District Attorney; or

G. The taking of whose fingerprints, palm prints or photograph has been ordered by a court.

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2. Photographs. Whenever a law enforcement officer or other individual is authorized, pursuant to subsection 1, paragraphs A, B, C, E or F, to take or cause to be taken the fingerprints of a person, the officer or other individual may take or cause to be taken the photograph or palm prints, or photograph and palm prints, of such person.

3. Fingerprint record forms. Fingerprints taken pursuant to subsection 1, paragraphs A, B, C, D and E shall be taken on a form furnished by the State Bureau of Identification, such form to be known as the Criminal Fingerprint Record. Fingerprints taken pursuant to subsection 1, paragraph F, shall be taken on a form furnished by the bureau, such form to be known as the Noncriminal Fingerprint Record. Fingerprints taken pursuant to subsection 1, paragraph G, shall be taken upon either the Criminal Fingerprint Record or the Noncriminal Fingerprint Record as the court shall order.

4. Duty to submit. It shall be the duty of the head of the arresting agency, or his designee, to transmit, within 5 days of the date of arrest, to the State Bureau of Identification the criminal fingerprint record of any person whose fingerprints are taken pursuant to subsection 1, paragraphs A, B or C. Law enforcement agencies other than the arresting agency shall not submit to the State Bureau of Identification a criminal fingerprint record for any person whose fingerprints are taken pursuant to subsection 1, paragraphs A, B or C, unless expressly requested to do so by the Commanding Officer of the State Bureau of Identification.

It shall be the duty of the Director of the Bureau of Corrections, or his designee, to transmit, within 5 days of the date of death, to the State Bureau of Identification, the criminal fingerprint record of any deceased person whose fingerprints are taken pursuant to subsection 1, paragraph E.

5. Law enforcement officer. As used in this section, "law enforcement officer" means any person who by virtue of his public employment is vested by law with a duty to prosecute offenders or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

1975, c. 763, § 5.

1975 Amendment. Section repealed and replaced by c. 763.

§ 1543. Repealed. 1975, c. 763, § 6

§ 1544. Uniform crime reporting

It shall be the duty of all state, county and municipal law enforcement agencies, including those employees of the University of Maine appointed to act as policemen, to submit to the State Bureau of Identification uniform crime reports, to include such information as is necessary to establish a Criminal Justice Information System and to enable the commanding officer to comply with section 1541, subsection 3. It shall be the duty of the bureau to prescribe the form, general content, time and manner of submission of such uniform crime reports. The bureau shall correlate the reports submitted to it and shall compile and submit to the Governor and Legislature annual reports based on such reports. A copy of such annual reports shall be furnished to all law enforcement agencies.

The bureau shall establish a category for abuse by adults of family or household members which shall be supplementary to its other reported information. The bureau shall prescribe the information to be submitted in the same manner as for all other categories of the uniform crime reports.

1975, c. 763, § 7; 1979, c. 578, § 6.

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Repeal

Section 7 of 1979, c. 578, as amended by 1979, c. 677, § 18, provides that the Act is repealed on November 1, 1983.

1975 Amendment. Section repealed and replaced by c. 763.

1979 Amendment. Chapter 578 added the second paragraph.

Laws 1979, c. 578 was presented to the Governor by the Senate on June 8, 1979 and, the Governor's signature having no force and effect, became law because it was not returned within three days after the meeting of the Second Regular Session of the 109th Legislature. (Constitution, Article IV, Part Third, Sec. 2) Received in the Office of the Secretary of State January 5, 1980.

Sunset provision. Section 7 of 1979, c. 578, as amended by 1979, c. 677, § 18, provided:

"This Act is repealed on November 1, 1983."

1. In general

Where the Supreme Judicial Court was not furnished with transcript of hearing on defendants' motion to obtain transcript of criminal record of third party from bureau of identification or Federal Bureau of Investigation in prosecution for breaking, entering and larceny in nighttime, Court had no way of knowing whether any showing of materiality was made and therefore had no basis upon which to predicate finding of error. State v. Burnham (1976) Me., 350 A.2d 577.

Where there was no showing in prosecution for breaking, entering and larceny in nighttime that State had in its possession any records from Federal Bureau of Investigation, such records were not discoverable in state court proceeding. Id.

Defendants, charged with breaking, entering and larceny in nighttime, had right to subpoena such records as may have existed in bureau of identification regarding criminal record of third party, to whom defendant, according to testimony of prosecution witness, had allegedly made certain statement. Id.

§§ 1545, 1546. Repealed. 1975, c. 763, § 8

§ 1549. Request for fingerprints; fee

The State Police, the sheriffs and the chiefs of police in each of the cities and towns shall have the authority to take or cause to be taken, and upon payment of a $1 fee, shall take or cause to be taken, the fingerprints or palm prints, or fingerprints and palm prints, of any person who shall request that his fingerprints or palm prints, or fingerprints and palm prints, be taken.

Such fingerprints and palm prints shall be taken on a form provided by the requesting person, or if the person does not provide a form, upon the Noncriminal Fingerprint Record. Fingerprints or palm prints taken pursuant to this section, or copies thereof, shall not be retained by the taker or forwarded to the State Bureau of Identification.

1975, c. 763, § 9; 1975, c. 771, § 264, eff. Jan. 4, 1977; 1977, c. 78, § 159, eff. April 14, 1977.

1975 Amendments. Chapter 771 substituted "Commissioner of Public Safety" for "Governor and Council" and c. 763 repealed and replaced section, without reference to amendment by c. 771.

1977 Amendment. Chapter 78 repealed and replaced this section to consolidate the effects of 1975, cc. 763 and 771.

§ 1550. Violations

Any person who fails to comply with the provisions of section 1542, subsections 1 or 3, or with the provisions of section 1542, subsection 4, imposing a duty to transmit criminal fingerprint records to the State Bureau of Identification, or with the provisions of sections 1544, 1547 or 1549 commits a civil violation for which a forfeiture of not more than $100 may be adjudged.

1975, c. 763, § 10.

Library References

Forfeitures ⇐4.
C.J.S. Forfeitures § 3.

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Title 16

SUBCHAPTER VIII

CRIMINAL HISTORY RECORD INFORMATION ACT

New Sections
611. Definitions.
612. Applications.
613. Limitations on dissemination of nonconviction data.
614. Limitation on dissemination of intelligence and investigative information.
615. Dissemination of conviction data.
616. Inquiries required.
617. Dissemination to noncriminal justice agencies.
618. Confirming existence or nonexistence of criminal history record information.
619. Unlawful dissemination.
620. Right to access and review.
621. Information and records of the Attorney General, State Police and Bureau of Identification.
622. Application.

Subchapter VIII, Criminal History Record Information Act, was enacted by 1979, c. 433, § 2.

§ 611. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms shall have the following meanings.

1. Administration of criminal justice. "Administration of criminal justice" means detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage and dissemination of criminal history record information.

2. Conviction data. "Conviction data" means criminal history record information other than nonconviction data.

3. Criminal history record information. "Criminal history record information" means notations or other written evidence of an arrest, detention, complaint, indictment, information or other formal criminal charge relating to an identifiable person. It shall include the identification or description of the person charged and any disposition of the charge. The term does not include identification information such as fingerprints, palm prints or photographic records to the extent that the information does not indicate involvement of the individual in the criminal justice system. The term does not include records of civil violations.

4. Criminal justice agency. "Criminal justice agency" means a federal, state, district, county or local government agency or any subunit thereof which performs the administration of criminal justice under a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. Courts shall be deemed to be criminal justice agencies.

5. Disposition. "Disposition" means the conclusion of criminal proceedings, and includes acquittal, acquittal by reason of mental disease or defect, filing of case, dismissal of charge, dismissal of charge due to mental incompetency, continuance due to mental incompetence, guilty plea, nolo contendere plea, nolle prosequi, conviction, sentence, death of defendant, mistrial, new trial granted, release from correctional supervision, parole, pardon, amnesty or extradition. If the disposition is that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, it shall include the nature of the termination or conclusion of the proceedings. If the disposition is that the proceedings have been indefinitely postponed, it shall include the reason for that postponement.

6. Dissemination. "Dissemination" means the transmission of information, whether orally, in writing or by electronic means by or to anyone outside the agency which maintains the information.

7. Executive order. "Executive order" means an order of the President of the United States or the chief executive of a state which has the force of law and which is published in a manner permitting regular public access thereto.

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8. Intelligence and investigative information. "Intelligence and investigative information" means information collected by criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity, or compiled in the course of investigation of known or suspected crimes. It does not include information that is criminal history record information.

9. Nonconviction data. "Nonconviction data" means criminal history record information of the following types:

A. Arrest information without disposition, if an interval of one year has elapsed from the date of the arrest and no active prosecution of the charge is pending. To be an active prosecution the case must be still actively in process, with arraignment completed and the case docketed for court trial;

B. Information disclosing that the police have elected not to refer a matter to a prosecutor;

C. Information disclosing that a prosecutor has elected not to commence criminal proceedings;

D. Information disclosing that criminal proceedings have been indefinitely postponed, e. g. a "filed" case, or a case which cannot be tried because the defendant is found to be mentally incompetent to stand trial;

E. A dismissal;

F. An acquittal, excepting an acquittal by reason of mental disease or defect; and

G. Information disclosing that a person has been granted a full and free pardon or amnesty.

10. Person. "Person" means an individual, government agency or a corporation, partnership or unincorporated association.

11. State. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States.

12. Statute. "Statute" means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.

1979, c. 433, § 2.

Amendments:
—1979. Chapter 433 enacted this subchapter.

Derivation:
1975, c. 763, § 3.
Former § 601 of this title.

Library References
Criminal Law ⇐1226(1).
C.J.S. Criminal Law § 2008.

§ 612. Application

1. Criminal justice agencies. This subchapter shall apply only to criminal justice agencies.

2. Exceptions. This subchapter shall not apply to criminal history record information contained in:

A. Posters, announcements or lists for identifying or apprehending fugitives or wanted persons;

B. Original records of entry, such as police blotters, that are maintained by criminal justice agencies and that are compiled and organized chronologically;

C. Records, retained at and by the District Court and Superior Court, of public judicial proceedings, including, but not limited to, docket entries and original court files;

D. Court or administrative opinions not impounded or otherwise declared confidential;

E. Records of public administrative or legislative proceedings;

F. Records of traffic offenses retained at and by the Secretary of State; and

G. Petitions for and warrants of pardons, commutations, reprieves and amnesties.

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3. Permissible disclosure. Nothing in this subchapter shall be construed to prohibit a criminal justice agency from:

A. Disclosing to the public criminal history record information related to an offense for which a person is currently within the criminal justice system;

B. Confirming prior criminal history record information to the public, in response to a specific inquiry that includes a specific name, date and charge or disposition, provided that the information disclosed is based upon data excluded by subsection 2. The disclosing criminal justice agency shall disclose therewith any and all criminal history record information in its possession which indicates the disposition of the arrest, detention or formal charges; and

C. Disseminating criminal history record information for purposes of international travel such as issuing visas and granting of citizenship.

1979, c. 433, § 2.

Amendments:
—1979. Chapter 433 enacted this section.

Derivation:
1975, c. 763, § 3.
1977, c. 281.
1977, c. 384, § 1.
Former § 603 of this title.

Library References
Criminal Law ⇐1226(1).
C.J.S. Criminal Law § 2008.

§ 613. Limitations on dissemination of nonconviction data

Except as provided in section 612, subsections 2 and 3, dissemination of nonconviction data by a criminal justice agency, whether directly or through any intermediary, shall be limited to:

1. Criminal justice agencies. Other criminal justice agencies for the purpose of the administration of criminal justice and criminal justice agency employment;

2. Under express authorization. Any person for any purpose when expressly authorized by statute, executive order, court rule, court decision or court order. Express authorization shall mean language in the statute, executive order, or court rule, decision or order which specifically speaks of nonconviction data or specifically refers to one or more of the types of nonconviction data;

3. Under specific agreements. Any person with a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice or to conduct investigations determining the employment suitability of prospective law enforcement officers. The agreement shall specifically authorize access to data, limit the use of the data to purposes for which given, insure security and confidentiality of the data consistent with this subchapter and provide sanctions for any violations; and

4. Research activities. Any person for the express purpose of research, evaluation or statistical purposes or under an agreement with the criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluation or statistical purposes, insure the confidentiality and security of the data consistent with this subchapter and provide sanctions for any violations.

1979, c. 433, § 2.

Amendments:
—1979. Chapter 433 enacted this section.

Derivation:
1975, c. 763, § 3.
Former § 603 of this title.

Library References
Criminal Law ⇐1226(2).
C.J.S. Criminal Law § 2008.

§ 614. Limitation on dissemination of intelligence and investigative information

1. Limitation on dissemination of intelligence and investigative information. Reports or records in the custody of a local, county or district criminal justice agency containing intelligence and investigative information shall be confidential and shall not be disseminated, if public release or inspection of the report or record may:

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A. Interfere with law enforcement proceedings;

B. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury;

C. Result in public dissemination of information about the private life of an individual in which there is no legitimate public interest and which would be offensive to a reasonable person;

D. Disclose the identity of a confidential source;

E. Disclose confidential information furnished only by the confidential source;

F. Disclose investigative techniques and procedures not generally known by the general public; or

G. Endanger the life or physical safety of law enforcement personnel.

2. Exception to this limitation. Nothing in this section shall preclude dissemination of intelligence and investigative information to another criminal justice agency. Intelligence and investigative information may also be disseminated to an accused person or his attorney, if authorized by:

A. The District Attorney for the district in which that accused person is to be tried;

B. A rule or ruling of a court of this State or of the United States; or

C. The Attorney General.

1979, c. 433, § 2.

Amendments:
—1979. Chapter 433 enacted this section.

Derivation:
1975, c. 763, § 3.
1977, c. 311, § 2.
1977, c. 383.
Former § 604 of this title.

Library References
Criminal Law ⇐1226(2).
C.J.S. Criminal Law § 2008.

§ 615. Dissemination of conviction data

Conviction data may be disseminated to any person for any purpose.

1979, c. 433, § 2.

Amendments:
—1979. Chapter 433 enacted this section.

§ 616. Inquiries required

A criminal justice agency shall query the State Bureau of Identification prior to dissemination of any criminal history record information for noncriminal justice purposes to assure that the most up-to-date disposition is being used.

1979, c. 433, § 2.

Amendments:
—1979. Chapter 433 enacted this section.

§ 617. Dissemination to noncriminal justice agencies

Criminal history record information disseminated to a noncriminal justice agency under section 613 shall be used solely for the purpose of which it was disseminated and shall not be disseminated further.

1979, c. 433, § 2.

Amendments:
—1979. Chapter 433 enacted this section.

Derivation:
1975, c. 763, § 3.
1977, c. 311, § 2.
1977, c. 383.
Former § 604 of this title.

Library References
Criminal Law ⇐1226(2).
C.J.S. Criminal Law § 2008.

§ 618. Confirming existence or nonexistence of criminal history record information

Except as provided in section 612, subsection 3, paragraph B, no criminal justice agency shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.

1979, c. 433, § 2.

Amendments:
—1979. Chapter 433 enacted this section.

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§ 619. Unlawful dissemination

1. Offense. A person is guilty of unlawful dissemination if he knowingly disseminates criminal history information in violation of any of the provisions of this subchapter.

2. Classification. Unlawful dissemination is a Class E crime.

1979, c. 433, § 2.

Amendments:
—1979. Chapter 433 enacted this section.

Derivation:
1975, c. 763, § 3.
Former § 605 of this title.

§ 620. Right to access and review

1. Inspection. Any person or his attorney may inspect the criminal history record information concerning him maintained by a criminal justice agency. A person's right to inspect or review criminal history record information shall not include access to intelligence and investigative information or any other information which is not criminal history record information. A criminal justice agency may prescribe reasonable hours and locations at which the right may be exercised and any additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary. These restrictions shall be to insure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect that information. The agency shall supply the person or his attorney with a copy of the criminal history record information pertaining to him on request and payment of a reasonable fee.

2. Review. A person or his attorney may request amendment or correction of criminal justice record information concerning him by addressing, either in person or by mail, his request to the criminal justice agency in which the information is maintained. The request shall indicate the particular record involved, the nature of the correction sought and the justification for the amendment or correction.

On receipt of a request, the criminal justice agency shall take necessary steps to determine whether the questioned information is accurate and complete. If investigation reveals that the questioned information is inaccurate or incomplete, the agency shall immediately correct the error or deficiency and advise the requesting person that the correction or amendment has been made.

Not later than 15 days, excluding Saturdays, Sundays and legal public holidays, after the receipt of a request, the agency shall notify the requesting person in writing either that the agency has corrected the error or deficiency or that it refuses to make the requested amendment or correction. The notice of refusal shall include the reasons therefor, the procedure established by the agency for requesting a review by the head of the agency of that refusal and the name and business address of that official.

3. Administrative appeal. If there is a request for review, the head of the agency shall, not later than 30 days from the date of the request, excluding Saturdays, Sundays and legal public holidays, complete the review and either make the requested amendment or correction or refuse to do so. If the head of the agency refuses to make the requested amendment or correction, he shall permit the requesting person to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal. He shall also notify the person of the provisions for judicial review of the reviewing official's determination under subsection 4.

Dissemination of the disputed criminal history record information by that agency with which the requesting person has filed a statement of disagreement, occurring after the filing of such statement, shall clearly reflect notice of the dispute. A copy of the statement shall be included, along with, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendment or correction requested.

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4. Judicial review. If an administrative appeal brought pursuant to subsection 3 is denied by the head of the agency, or the requesting person believes the decision of the head of the agency to be otherwise unsatisfactory, the person may, within 30 days of the decision rendered by the head of the agency, seek relief in the Superior Court.

5. Notification. When a criminal justice agency has amended or corrected a person's criminal history record information in response to written request as provided in subsection 2 or a court order, the agency shall, within 30 days thereof, advise all prior recipients, who have received that information within the year prior to the amendment or correction, of the amendment or correction. It shall also notify the person of compliance with that requirement and the prior recipients notified.

6. Right of release. The provisions of this subchapter shall not limit the right of a person to disseminate to any other person criminal history record information pertaining to himself.

1979, c. 233, § 2.

Amendments:
—1979. Chapter 433 enacted this section.

Derivation:
1975, c. 763, § 3.
1977, c. 384, §§ 2 to 4.
Former § 606 of this title.

Library References
Criminal Law ⇐1226(1).
C.J.S. Criminal Law § 2008.

§ 621. Information and records of the Attorney General, State Police and Bureau of Identification

Nothing in this subchapter shall require dissemination of information or records of the Attorney General, State Police or Bureau of Identification that are declared to be confidential under Title 5, section 200-D or Title 25, section 1631.

1979, c. 433, § 2.

Amendments:
—1979. Chapter 433 enacted this section.

§ 622. Application

The provisions of this subchapter shall apply to criminal history record information in existence before July 29, 1976, including that which has been previously expunged under any other provision of Maine law, as well as to criminal history record information in existence on July 29, 1976 and thereafter.

1979, c. 433, § 2.

Amendments:
—1979. Chapter 433 enacted this section.

Derivation:
1975, c. 763, § 3.
Former § 607 of this title.

§ 2161-A. Repealed. 1975, c. 763, § 1; 1977, c. 78, § 117, eff. April 14, 1977

The repealed section, relating to expungement of records, was derived from Laws 1973, c. 691 and Laws 1975, c. 771, § 159.
See, now, § 611 et seq. of title 16.

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	27-746			X
2. Privacy and Security Council	27-746			X
3. Dissemination Regulations	27-749			X
Conviction Information	Reg. 12.06.08.10B			X
3.10 Authorizes to Criminal Justice Agencies				
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	27-749 Reg. 12.06.08.10C(1)			X X
3.12 Authorizes to Private Sector	27-749 Reg. 12.06.08.10D			X X
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information	27-749			X
3.20 Authorizes to Criminal Justice Agencies	Reg. 12.06.08.10B			X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	27-749 Reg. 12.06.08.10C(2)			X X
3.22 Authorizes to Private Sector	27-749 12.06.08.10D(2)			X X
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information	27-749			X
3.30 Authorizes to Criminal Justice Agencies	Reg. 12.06.08.10B			X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	27-749 Reg. 12.06.08.10C(2)			X X
3.32 Authorizes to Private Sector	27-749 Reg. 12.06.08.10D			X X
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes	27.751 Reg. 12.06.08.05			X X
4.3 Right to Inspect and Obtain Copy				
5. Right to Challenge	27-752 Reg. 12.06.08.07			X X
6. Judicial Review of Challenged Information	27-753(c)			X
7. Purging Non-Conviction Information	27-736 27-737	X X		
8. Purging Conviction Information	27-292			X

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information				
11. Removal of Disqualifications	27-292			X
12. Right to State Non-Existence of Record	27-292 27-740	X		X
13. Research Access	27-749 43B-22 Reg. 12.06.08.10F(7)	X		X X
14. Accuracy and Completeness	Reg. 12.06.08.09 Rule 1218			X X
14.1 Disposition Reporting Requirements	27-747 27-748			X X
14.2 Auditing Requirements	Reg. 12.06.08.12			X
14.3 Other Accuracy/Completeness Requirements	Reg. 12.06.08.08B Reg. 12.06.08.10G			X X
15. Dedication				
16. Civil Remedies	Reg. 12.06.08.10N 76A-5			X X
17. Criminal Penalties	27-739 43B-22 76A-5	X X		 X
18. Public Records	76A-1 et seq.			X
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security				
22.1 Physical (Building) Security	Reg. 12.06.08.11			X
22.2 Administrative Security	Reg. 12.06.08.11			X
22.3 Computer Security	Reg. 12.06.08.11			X
23. Transaction Logs	Reg. 12.06.08.10G(2) Reg. 12.06.08.10H, I, K			X X
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)	76A-1,2			X
27. FOIA (Excluding CJI)				
28. Central State Repository	27-747(b) Reg. 12.06.08.04			X X

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Maryland Annotated Code of 1957

Art. 27

V

CRIMINAL JUSTICE INFORMATION SYSTEM

§ 742. Purpose of subtitle; legislative findings.

(a) The purpose of this subtitle is to create and maintain an accurate and efficient criminal justice information system in Maryland consistent with applicable federal law and regulations, the need of criminal justice agencies in the State for accurate and current criminal history record information, and the right of individuals to be free from improper and unwarranted intrusions into their privacy.

(b) In order to achieve this result, the General Assembly finds that there is a need:

(1) To create a central repository for criminal history record information;

(2) To require the reporting of accurate, relevant, and current information to the central repository by all criminal justice agencies;

(3) To ensure that criminal history record information is kept accurate and current; and

(4) To prohibit the improper dissemination of such information.

(c) This subtitle is intended to provide a basic statutory framework within which these objectives can be attained. (1976, ch. 239.)

Editor's note. — Section 3, ch. 239, Acts 1976, provides that the act shall take effect Dec. 31, 1977, except that §§ 742, 743, 744, 745, 746, 748, 751, 752, and 753 shall take effect July 1, 1976.

§ 743. Definitions.

(a) As used in this subtitle, the following words have the meanings indicated.

(b) *"Advisory Board"* means the Criminal Justice Information Advisory Board.

(c) *"Central repository"* means the criminal justice information system central repository created by § 747 (b) of this article.

(d) *"County"* includes Baltimore City.

(e) *"Criminal history record information"* means data initiated or collected by a criminal justice agency on a person pertaining to a reportable event. The term does not include:

(1) Data contained in intelligence or investigatory files or police work-product records used solely for police investigation purposes;

(2) Data pertaining to a proceeding under Subtitle 8 of Title 3 of the Courts Article (Juvenile Causes), but it does include data pertaining to a person following waiver of jurisdiction by a juvenile court;

(3) Wanted posters, police blotter entries, court records of public judicial proceedings, or published court opinions;

(4) Data pertaining to violations of the traffic laws of the State or any other traffic law, ordinance, or regulation, or violations of any local ordinances, or any State or local regulations, or violations of the Natural Resources Article or public local laws, unless the individual is arrested on a bench warrant issued for failure to appear in court or obey a court order for any such violation, or unless

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the individual is committed to a correctional facility upon conviction for any such violation;

(5) Data concerning the point system established by the Motor Vehicle Administration in accordance with the provisions of Title 16 of the Transportation Article;

(6) Presentence investigation and other reports prepared by a probation department for use by a court in the exercise of criminal jurisdiction or by the Governor in the exercise of his power of pardon, reprieve, commutation, or nolle prosequi; or

(7) Data contained in current case-in-progress systems or records pertinent to public judicial proceedings which are reasonably contemporaneous to the event to which the information relates.

(f) *"Criminal justice agency"* means any government agency or subunit of any such agency which is authorized by law to exercise the power of arrest, detention, prosecution, adjudication, correctional supervision, rehabilitation, or release of persons suspected, charged, or convicted of a crime and which allocates a substantial portion of its annual budget to any of these functions. The term does not include the Juvenile Services Administration or a juvenile court, but it does include the following agencies, when exercising jurisdiction over criminal matters or criminal history record information:

(1) State, county, and municipal police departments and agencies, sheriffs' offices, correctional facilities, jails, and detention centers;

(2) The offices of the Attorney General, the State's attorneys, and any other person authorized by law to prosecute persons accused of criminal offenses;

(3) The Administrative Office of the Courts, the Court of Appeals, the Court of Special Appeals, the circuit courts, including the courts of the Supreme Bench of Baltimore City, the District Court of Maryland, and the offices of the clerks of these courts.

(g) *"Criminal justice information system"* means the equipment (including computer hardware and software), facilities, procedures, agreements, and personnel used in the collection, processing, preservation, and dissemination of criminal history record information.

(h) *"Disseminate"* means to transmit criminal history record information in any oral or written form. The term does not include:

(1) The transmittal of such information within a criminal justice agency;

(2) The reporting of such information as required by § 747 of this article; or

(3) The transmittal of such information between criminal justice agencies in order to permit the initiation of subsequent criminal justice proceedings against a person relating to the same offense.

(i) *"Reportable event"* means an event specified or provided for in § 747.

(j) *"Secretary"* means the Secretary of Public Safety and Correctional Services. (1976, ch. 239; 1977, ch. 765, § 8; 1978, ch. 329; 1979, ch. 633.)

Effect of amendments. — The 1977 amendment, effective July 1, 1977, substituted "§ 21-902 of the Transportation Article" for "§ 11-902 of Article 66½ of the Code" at the end of paragraph (4) in subsection (e) and substituted "Title 16 of the Transportation Article" for "Subtitle 6, Part VII of Article 66½ of the Code" at the end of paragraph (5).

The 1978 amendment, approved May 2, 1978, and effective from date of passage, substituted

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the language beginning "or violations of any local ordinances" for "except offenses involving death or injury to a person, or offenses under § 21-902 of the Transportation Article" at the end of paragraph (4) in subsection (e).

The 1979 amendment, effective July 1, 1979, added "or public local laws" in paragraph (4) of subsection (e).

Editor's note. — Section 3, ch. 239, Acts 1976, provides that this section shall take effect July 1, 1976.

Civil nonsupport matters not included in subsection (e). — Because civil nonsupport matters are not reportable events pursuant to § 747 of this article, they do not constitute criminal history record information as defined in this section. 63 Op. Att'y Gen. (August 3, 1978).

§ 744. Criminal Justice Information Advisory Board created; composition; appointment and terms of members; chairman; vacancy; compensation and expenses; staff.

(a) *Created; term; composition; designation of representative.* — There is a Criminal Justice Information Advisory Board which, for administrative and budgetary purposes only, is within the Department of Public Safety and Correctional Services. Subject to the provisions of subsection (b), the members shall be appointed for a term of three years. One member shall be designated by the Governor as chairman. Each member, other than the member from the general public, may designate a person to represent him at any board meeting, but the designee may not vote. The Advisory Board consists of the following members:

(1) One member of the Maryland Senate appointed by the President of the Senate;

(2) One member of the House of Delegates appointed by the Speaker of the House of Delegates;

(3) The executive director of the Governor's Commission on Law Enforcement and the Administration of Justice;

(4) Three persons from the judicial branch of State government appointed by the Chief Judge of the Court of Appeals;

(5) The Secretary of Public Safety and Correctional Services;

(6) Two executive officials from State, county, or municipal police agencies;

(7) One executive official from a correctional services agency;

(8) Two elected county officials;

(9) The Attorney General of Maryland;

(10) One elected municipal official;

(11) One State's attorney; and

(12) One person from the general public.

(b) *Appointment of members.* — Except for those members appointed by the President of the Senate, the Speaker of the House, and the Chief Judge of the Court of Appeals, all members are appointed by the Governor. The executive director of the Governor's Commission, the Secretary of Public Safety and Correctional Services, and the Attorney General shall serve ex officio.

(c) *Vacancy.* — A vacancy occurring before the expiration of a term shall be filled by the appointing authority for the remainder of the term. A member serves until his successor is appointed and qualifies.

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(d) *Compensation and expenses.* — Members shall receive no compensation for their services, but shall be reimbursed from their reasonable expenses as provided in the State budget.

(e) *Use of staff and facilities of other agencies.* — In the performance of its functions, the Advisory Board may use the services of the staff and the facilities of the Department of Public Safety and Correctional Services, the Administrative Office of the Courts, and the Governor's Commission on Law Enforcement and the Administration of Justice, subject to the approval of the head of the respective department or agency. (1976, ch. 239.)

Editor's note. — Section 3, ch. 239, Acts 1976, provides that this section shall take effect July 1, 1976.

§ 745. Duties of Advisory Board.

(a) *Generally.* — The Advisory Board shall perform the duties set forth in this section and those of an advisory nature that may otherwise be delegated to it in accordance with law.

(b) *Information to Secretary and Court of Appeals.* — It shall advise the Secretary and the Court of Appeals and its Chief Judge on matters pertaining to the development, operation, and maintenance of the criminal justice information system, and shall monitor the operation of the system.

(c) *Rules and regulations.* — It shall propose and recommend to the Secretary, and, in conjunction with the Standing Committee on Rules of the Court of Appeals, to the Court and its Chief Judge, rules and regulations necessary to the development, operation, and maintenance of the criminal justice information system.

(d) *Recommendations and reports.* — It shall:

(1) Recommend procedures and methods for the use of criminal history record information for the purpose of research, evaluation, and statistical analysis of criminal activity;

(2) Recommend any legislation necessary for the implementation, operation, and maintenance of the criminal justice information system; and

(3) Report annually to the Governor and the General Assembly on the development and operation of the criminal justice information system. (1976, ch. 239.)

Editor's note. — Section 3, ch. 239, Acts 1976, provides that this section shall take effect July 1, 1976.

§ 746. Adoption of rules.

(a) *Duty of Secretary and Court of Appeals.* — The Secretary shall adopt appropriate rules and regulations for agencies in the executive branch of government and for criminal justice agencies other than those that are part of the judicial branch of government to implement the provisions of this subtitle and to establish, operate, and maintain the criminal justice information system.

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The Court of Appeals and its Chief Judge, acting pursuant to §§ 18 and 18A of Article IV of the Constitution of Maryland, shall adopt appropriate rules and regulations for the same purposes for the judicial branch of government.

(b) *Scope of rules.* — Subject to the provisions of Article 15A, § 23B, the rules and regulations adopted by the Secretary, the Court, and the Chief Judge shall include those:

(1) Governing the collection, reporting, and dissemination of criminal history record information by the courts and all other criminal justice agencies;

(2) Necessary to insure the security of the criminal justice information system and all criminal history record information reported and collected from it;

(3) Governing the dissemination of criminal history record information in accordance with the provisions of this subtitle and the provisions of §§ 735 to 741;

(4) Governing the procedures for inspection and challenging of criminal history record information;

(5) Governing the auditing of criminal justice agencies to insure that criminal history record information is accurate and complete and that it is collected, reported, and disseminated in accordance with the provisions of this subtitle and the provisions of §§ 735 to 741;

(6) Governing the development and content of agreements between the central repository and criminal justice and noncriminal justice agencies;

(7) Governing the exercise of the rights of inspection and challenge provided for in §§ 751 through 755.

(c) *Consistent with subtitle.* — Rules and regulations adopted by the Secretary or the Court or its Chief Judge may not be inconsistent with the provisions of this subtitle. (1976, ch. 239.)

Editor's note. — Section 3, ch. 239, Acts 1976, provides that this section shall take effect July 1, 1976.

Ultimate authority to promulgate and enforce rules and regulations. — The Court of Appeals and the Secretary have the ultimate authority to promulgate and enforce rules and regulations relating to the collection, reporting and dissemination of criminal history records information, whether stored in an automated or manual system. 63 Op. Att'y Gen. (January 10, 1978).

The Court of Appeals and the Secretary have the ultimate authority to promulgate and enforce rules and regulations relating to the security of criminal history records information, whether stored in an automated or a manual system. 63 Op. Att'y Gen. (January 10, 1978).

Responsibilities of secretaries under system are compatible. — While the criminal justice information system clearly intends that the Secretary of Public Safety and Correctional Services direct the operation and management of Maryland's criminal justice information system, it also clearly subjects the automatic data processing portion thereof to the central data processing authority of the Secretary of Budget and Fiscal Planning and, as a matter of State law, these responsibilities are compatible. 63 Op. Att'y Gen. (January 10, 1978).

In consolidation of Public Safety Data Center with Baltimore Computer Utility, the Secretary of Budget and Fiscal Planning would continue to have the central data processing authority which he presently has with respect to all executive branch data processing, including the present Public Safety Data Center; and the Comptroller of the Treasury would acquire central processing responsibility which, insofar as the Court's portion of the criminal justice information system central repository is concerned, would be subject to the superior authority of the Court of Appeals and its Chief Judge in much the same manner as the responsibility of the operator of the Public Safety Data Center presently is subject to that judicial administrative authority. 63 Op. Att'y Gen. (January 10, 1978).

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§ 747. Reporting criminal history record information; central repository.

(a) *Reportable events.* — The following events are reportable events under this subtitle:

(1) Issuance or withdrawal of an arrest warrant;

(2) An arrest;

(3) Release of a person after arrest without the filing of a charge;

(4) Presentment of an indictment, filing of a criminal information, or filing of a statement of charges after arrest;

(5) A release pending trial or appeal;

(6) Commitment to a place of pretrial detention;

(7) Dismissal or quashing of an indictment or criminal information;

(8) A nolle prosequi;

(9) Placement of a charge on the stet docket;

(10) An acquittal, conviction, or other disposition at or following trial, including a finding of probation before judgment;

(11) Imposition of a sentence;

(12) Commitment to a correctional facility, whether State or locally operated;

(13) Release from detention or confinement;

(14) An escape from confinement;

(15) A pardon, reprieve, commutation of sentence, or other change in a sentence, including a change ordered by a court;

(16) Entry of an appeal to an appellate court;

(17) Judgment of an appellate court;

(18) Order of a court in a collateral proceeding that affects a person's conviction, sentence, or confinement; and

(19) Any other event arising out of or occurring during the course of criminal justice proceedings declared to be reportable by rule or regulation of the Secretary or the Court of Appeals.

(b) *Establishment and operation of central repository.* — There is a criminal justice information system central repository for the collection, storage, and dissemination of criminal history record information. The central repository shall be operated by the Maryland State Police, under the administrative control of the Secretary, with the advice of the Advisory Board.

(c) *Time for reporting criminal history record information.* — Every criminal justice agency shall report criminal history record information, whether collected manually or by means of an automated system, to the central repository, in accordance with the following provisions:

(1) Data pertaining to an arrest or the issuance of an arrest warrant shall be reported within 72 hours after the arrest is made or the warrant is issued whichever first occurs;

(2) Data pertaining to the release of a person after arrest without the filing of a charge shall be reported within 30 days after the person is released;

(3) Data pertaining to any other reportable event shall be reported within 60 days after occurrence of the event;

(4) The time requirements in this subsection may be reduced by rules adopted by the Secretary or the Court of Appeals.

(d) *Reporting methods.* — Reporting methods may include:

(1) Submittal of criminal history record information by a criminal justice agency directly to the central repository;

(2) If the information can readily be collected and reported through the court system, submittal to the central repository by the administrative office of the courts; or

(3) If the information can readily be collected and reported through criminal justice agencies that are part of a geographically based information system, submittal to the central repository by such agencies.

(e) *Maintenance and dissemination of more detailed information.* — Nothing in this section shall prevent a criminal justice agency from maintaining more detailed information than is required to be reported to the central repository. However, the dissemination of any such criminal history record information is governed by the provisions of § 749.

(f) *Avoidance of duplication in reporting.* — The Secretary and the Court of Appeals may determine, by rule, the reportable events to be reported by each criminal justice agency, in order to avoid duplication in reporting. (1976, ch. 239; 1979, ch. 633.)

Effect of amendment. The 1979 amendment, effective July 1, 1979, added "after arrest" at the end of paragraph (4) in subsection (a).

Effective Dec. 31, 1977. — See Editor's note to § 742 of this article.

Civil nonsupport matters do not constitute criminal history record information. — Because civil nonsupport matters are not reportable events pursuant to this section, they do not constitute criminal history record information as defined in § 743 of this article. 63 Op. Att'y Gen. (August 3, 1978).

State law does not prohibit use of data center operated by noncriminal justice agency so long as the criminal justice information system central repository is operated by the Maryland State Police under the administrative control of the Secretary of Public Safety and Correctional Services with the advice of the Criminal Justice Information Advisory Board. 63 Op. Att'y Gen. (January 10, 1978).

Responsibilities of secretaries under system are compatible. — While the criminal justice information system clearly intends that the Secretary of Public Safety and Correctional Services direct the operation and management of Maryland's criminal justice information system, it also clearly subjects the automatic data processing portion thereof to the central data processing authority of the Secretary of Budget and Fiscal Planning and, as a matter of State law, these responsibilities are compatible. 63 Op. Att'y Gen. (January 10, 1978).

In consolidation of Public Safety Data Center with Baltimore Computer Utility, the Secretary of Budget and Fiscal Planning would continue to have the central data processing authority which he presently has with respect to all executive branch data processing, including the present Public Safety Data Center; and the Comptroller of the Treasury would acquire central processing responsibility which, insofar as the court's portion of the criminal justice information system central repository is concerned, would be subject to the superior authority of the Court of Appeals and its Chief Judge in much the same manner as the responsibility of the operator of the Public Safety Data Center presently is subject to that judicial administrative authority. 63 Op. Att'y Gen. (January 10, 1978).

In consolidation of the Public Safety Data Center with the Baltimore Computer Utility, the Secretary of Public Safety and Correctional Services would continue, for the purposes of the Public Information Act, to be the "official custodian" of the criminal history records stored in the shared system and the Maryland State Police would continue to be the "custodians" of such records. 63 Op. Att'y Gen. (January 10, 1978).

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§ 748. Agreements with criminal justice agencies; sharing criminal history record information.

(a) *Duty of Secretary and Chief Judge of Court of Appeals; provisions of agreements.* — The Secretary and the Chief Judge of the Court of Appeals shall develop agreements between the central repository and criminal justice agencies pertaining to:

(1) The method by which the agency will report information, including the method of identifying an offender in a manner that permits other criminal justice agencies to locate the offender at any stage in the criminal justice system, the time of reporting, the specific data to be reported by the agency, and the place of reporting;

(2) The services to be provided to the agency by the central repository;

(3) The conditions and limitations upon the dissemination of criminal history record information by the agency;

(4) The maintenance of security in all transactions between the central repository and the agency;

(5) The method of complying with the right of a person to inspect, challenge, and correct criminal history record information maintained by the agency;

(6) Audit requirements to ensure the accuracy of all information reported or disseminated;

(7) The timetable for the implementation of the agreement;

(8) Sanctions for failure of the agency to comply with any of the provisions of this subtitle, including the revocation of any agreement between the agency and the central repository and appropriate judicial or administrative proceedings to enforce compliance; and

(9) Other provisions that the Chief Judge and the Secretary may deem necessary.

(b) *Sharing information with other states and countries and federal agencies.* — The Secretary and the Chief Judge of the Court of Appeals may develop procedures for the sharing of criminal history record information with federal criminal justice agencies and criminal justice agencies of other states and other countries, consistent with the provisions of this subtitle. (1976, ch. 239; 1979, ch. 633.)

Effect of amendment. — The 1979 amendment, effective July 1, 1979, substituted "Chief Judge of the Court of Appeals" for "Court of Appeals, pursuant to the rules adopted by them" in the introductory paragraph in subsection (a) and substituted "Chief Judge" for "Court of Appeals" in paragraph (9) in that subsection.

Editor's note. — Section 3, ch. 239, Acts 1976, provides that this section shall take effect July 1, 1976.

§ 749. Dissemination of criminal history record information.

A criminal justice agency and the central repository may not disseminate criminal history record information except in accordance with the applicable federal law and regulations. (1976, ch. 239.)

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Effective Dec. 31, 1977. — See Editor's note to § 742 of this article.

Dissemination by Division of Parole and Probation. — The Division of Parole and Probation may only disseminate criminal history record information, pursuant to this section, in accordance with applicable federal law and/or regulations. 63 Op. Att'y Gen. (August 3, 1978).

Disclosure of criminal record for employment purposes. — Under certain circumstances, the disclosure of a criminal conviction record to an employer or prospective employer of a parolee or probationer may be indicated. 63 Op. Att'y Gen. (August 3, 1978).

§ 750. Compliance with §§ 735 to 741.

Notwithstanding any other provisions of this subtitle no record may be maintained or disseminated inconsistently with the provisions of §§ 735 through 741 of Article 27. (1976, ch. 239.)

Effective Dec. 31, 1977. — See Editor's note to § 742 of this article.

§ 751. Right of inspection; copies.

(a) Subject to the provisions of § 752 (f), a person may inspect criminal history record information maintained by a criminal justice agency concerning him. A person's attorney may inspect such information if he satisfactorily establishes his identity and presents a written authorization from his client.

(b) Nothing in this section requires a criminal justice agency to make a copy of any information or allows a person to remove any document for the purpose of making a copy of it. A person having the right of inspection may make notes of the information. (1976, ch. 239.)

Editor's note. — Section 3, ch. 239, Acts 1976, provides that this section shall take effect July 1, 1976.

§ 752. Challenging information.

(a) *Notice of challenge.* — A person who has inspected criminal history record information relating to him may challenge the completeness, contents, accuracy, or dissemination of such information by giving written notice of his challenge to the central repository and to the agency at which he inspected the information, if other than the central repository. The notice shall set forth the portion of the information challenged, the reason for the challenge, certified documentation or other evidence supporting the challenge, if available, and the change requested in order to correct or complete the information or the dissemination of the information. The notice shall contain a sworn statement, under penalty of perjury, that the information in or supporting the challenge is accurate and that the challenge is made in good faith.

(b) *Audit of information; notice of repository's determination.* — Upon receipt of the notice, the central repository shall conduct an audit of that part of the person's criminal history record information necessary to determine the accuracy of the challenge. As part of the audit, the central repository may

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require any criminal justice agency that was the source of challenged information to verify the information. The central repository shall notify the person of the results of its audit and its determination within 90 days after receipt of the notice of challenge. This notice shall be in writing, and, if the challenge or any part of it is rejected, the notice shall inform the person of his rights of appeal.

(c) *Correction of records.* — If the challenge or any part of it is determined to be valid, the central repository shall make the appropriate correction on its records and shall notify any criminal justice agency which has custody of the incomplete or inaccurate information, or portion of it of the correction, and the agency shall take appropriate steps to correct its records. The agency shall certify to the central repository that the correction was made.

(d) *Notice of correction when information disseminated.* — A criminal justice agency required to correct any criminal history record information pursuant to subsection (c) that had previously disseminated such information shall give written notice to the agency or person to whom the information was disseminated of the correction. That agency or person shall promptly make the correction on its records, and certify to the disseminating agency that the correction was made.

(e) *Notice to agencies of denial of challenge.* — If the challenge, or any part of it, is denied, the central repository shall give written notice of the denial to any agency with which a copy of the challenge was filed.

(f) *Inspection or challenge of information relevant to pending criminal proceeding.* — A person is not entitled to inspect or challenge any criminal history record information pursuant to this subtitle if the information or any part of it is relevant to a pending criminal proceeding. This subsection does not affect any right of inspection and discovery permitted under Chapter 700 of the Maryland Rules or the Maryland District Rules, or permitted under any statute, rule, or regulation not part of or adopted pursuant to this subtitle.

(g) *Delay in requiring performance of duties by central repository.* — The provisions of this section concerning the duties of the central repository may, by rule of the Secretary, be delayed until the Secretary determines that the central repository is able to comply with them, but not later than July 1, 1977. Until then, the duties of the central repository shall be performed by the appropriate criminal justice agencies. (1976, ch. 239.)

Editor's note. — Section 3, ch. 239, Acts 1976, provides that this section shall take effect July 1, 1976.

§ 753. Rights of appeal.

(a) *Rules for administrative appeals.* — The Secretary and the Court of Appeals shall adopt appropriate rules and procedures for administrative appeals from decisions by criminal justice agencies denying the right of inspection of, or challenges made to, criminal history record information.

These rules shall include provisions for:

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(1) The forms, manner, and time for taking an appeal;
(2) The official or tribunal designated to hear the appeal;
(3) Hearing and determining the appeal; and
(4) Implementing the decision on appeal.

(b) *Right to take administrative appeal.* — A person aggrieved by a decision of a criminal justice agency concerning inspection or a challenge may take an administrative appeal in accordance with the rules and procedures adopted by the Secretary and the Court of Appeals.

(c) *Judicial review.* — A person aggrieved by a decision on an administrative appeal, including the central repository and a criminal justice agency, may seek judicial review in accordance with the Administrative Procedure Act and the Maryland Rules. (1976, ch. 239.)

Editor's note. — Section 3, ch. 239, Acts 1976, provides that this section shall take effect July 1, 1976.

§ 754. Requiring inspection or challenge of information in order to qualify for employment.

(a) It is unlawful for any employer or prospective employer to require a person to inspect or challenge any criminal history record information relating to that person for the purpose of obtaining a copy of the person's record in order to qualify for employment.

(b) Any person violating the provisions of this section is guilty of a misdemeanor, and, upon conviction, is subject to a fine of not more than $5,000 or imprisonment for not more than six months, or both, for each violation. (1976, ch. 239.)

Effective Dec. 31, 1977. — See Editor's note to § 742 of this article.

§ 755. Inspection and challenge of information recorded prior to July 1, 1976.

Criminal history record information which was recorded prior to July 1, 1976 is subject to the right of access and challenge in accordance with this subtitle. However, the duty of a criminal justice agency is to make a reasonable search for such information. There is no duty to provide access to criminal history record information that cannot be located after a reasonable search. (1976, ch. 239.)

Effective Dec. 31, 1977. — See Editor's note to § 742 of this article.

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Article 27

§ 292. Expunging criminal arrest record of person not convicted; probation and discharge of first offenders.

(b) Whenever any person who has not previously been convicted of any offense under this subheading or under any prior law of this State or the laws of the United States or of any other state relating to controlled dangerous substances defined in this subheading, pleads guilty to or is found guilty of any of the offenses specified in this subheading, the court, if satisfied that the best interests of the person and the welfare of the people of this State would be served thereby may, with the consent of such person stay the entering of the judgment of guilt, defer further proceedings, and place such person on probation subject to such reasonable terms and conditions as may be appropriate and may in addition require that such person undergo inpatient or outpatient treatment for drug abuse. By consenting to and receiving a stay of entering of the judgment of guilt as provided by this subsection, the person waives all rights to appeal from the judgment of guilt by the court at any time. Prior to the person consenting to the stay of entering of the judgment of guilt, the court shall notify the person that by consenting to and receiving the stay of entry of judgment, he waives the right to appeal from the judgment of guilt by the court at any time. Upon violation of a term or condition, the court may enter a judgment of conviction and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without a judgment of conviction and shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by the law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions under § 293 of this subheading. Discharge and dismissal under this section may occur only once with respect to any person and in addition any public criminal record in any such case shall be expunged upon the satisfactory completion of any such period of probation. Any expunged arrest and/or conviction shall not thereafter be regarded as an arrest or conviction for purposes of employment, civil rights, or any statute or regulation or license or questionnaire or any other public or private purpose, provided that any such conviction shall continue to constitute an offense for purposes of this subheading or any other criminal statute under which the existence of a prior conviction is relevant.
(1978, ch. 964.)

Effect of amendment. — The 1978 amendment, effective July 1, 1978, inserted the second and third sentences in subsection (b).

As subsection (a) was not affected by the amendment, it is not set forth above.

Section and § 641 compared. — An order for probation under § 641 of this article, which has general application, is similar to an order under this section in that the court stays the entering of judgment, defers further proceedings and places the person on probation subject to reasonable terms, providing for discharge of the accused after probation, but unlike this section, § 641 does not provide for dismissal upon successful completion of probation, nor does § 641 provide for automatic expungement. Warren v. State, 281 Md. 179, 377 A.2d 1169 (1977).

Section is not at odds with, and does not preempt, Maryland Rules, Rule 764 (now 774). Hyman v. State, 29 Md. App. 399, 348 A.2d 34 (1975).

Sentencing provisions of subsection (b) prerequisite to expungement. — It is only when the procedures authorized by the sentencing provisions of subsection (b) of this section have been followed that the discharge, dismissal, and expungement provisions of the statute come into play. The court must be satisfied that the best interest of the person and the welfare of the people of Maryland were served. It should stay the entering of the judgment of guilt, with the consent of the person, defer further proceedings, and grant probation. It is then that the person is entitled, upon fulfillment of the terms and conditions of probation, to be discharged, to have the proceedings against him dismissed, and to have any criminal record expunged. The former is a condition precedent to the latter. Hyman v. State, 29 Md. App. 399, 348 A.2d 34 (1975).

Discharge and dismissal under subsection (b) of this section is not a conviction for purposes of imposing additional penalties for second or subsequent offenders under § 293 of this article. Warren v. State, 281 Md. 179, 377 A.2d 1169 (1977).

Probation different from suspension of sentence. — Probation under subsection (b) of this section is quite different from a suspension of sentence. Warren v. State, 281 Md. 179, 377 A.2d 1169 (1977).

ARTICLE 76A.

PUBLIC INFORMATION.

Sec.

1. Definitions.
1A. Only relevant and necessary information to be maintained; public access.
2. Inspection of public records generally; rules and regulations; procedure when records not immediately available; special provisions as to Charles County.
3. Custodian to allow inspection of public records; exceptions; denial of right of inspection of certain records; court order restricting disclosure of records ordinarily open to inspection.
4. Copies, printouts and photographs of public records.
5. Administrative review; judicial enforcement; civil liability; personnel disciplinary action; criminal liability; immunity from criminal or civil penalties.

Freedom of Information Act

6. Charles County Freedom of Information Act.

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7. Public policy.
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16. Public policy.
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27. Enforcement.
28. Validity of action not in conformity with subtitle.
29. Conflict of laws.
30. Maintenance of order.
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§ 1. Definitions.

(a) In this article the following words have the meanings indicated.

(b) *"Public records"* when not otherwise specified shall include any paper, correspondence, form, book, photograph, photostat, film, microfilm, sound recording, map, drawing, or other written document, regardless of physical form or characteristics, and including all copies thereof, that have been made by any branch of the State government, including the legislative, judicial, and executive branches, by any branch of a political subdivision, and by any agency or instrumentality of the State or a political subdivision, or received by them in connection with the transaction of public business. The term "public records" also includes the salaries of all employees of the State, of a political subdivision, and any agency or instrumentality thereof, both in the classified and nonclassified service.

(c) *"Applicant"* means and includes any person requesting disclosure of public records.

(d) *"Written documents"* means and includes all books, papers, maps, photographs, cards, tapes, recordings, computerized records, or other documentary materials, regardless of physical form or characteristics.

(e) *"Political subdivision"* means and includes every county, city and county, city, incorporated and unincorporated town, school district, and special district within the State.

(f) *"Official custodian"* means and includes each and every officer or employee of the State or any agency, institution, or political subdivision thereof, who is responsible for the maintenance, care, and keeping of public records, regardless of whether such records are in his actual personal custody and control.

(g) *"Custodian"* means and includes the official custodian or any authorized person having personal custody and control of the public records in question.

(h) *"Person"* means and includes any natural person, corporation, partnership, firm, association, or governmental agency.

(i) *"Person in interest"* means and includes the person who is the subject of a record or any representative designated by said person, except that if the subject of the record is under legal disability, the term "person in interest" shall mean and include the parent or duly appointed legal representative. (1970, ch. 698; 1973, ch. 63; 1978, ch. 1006.)

Intent of 1973 amendment. — It is clear that the thrust of the 1973 amendment to subsection (b) of this section was in the direction of the modern trend to require financial disclosures and end invidious shadows of secrecy. Moberly v. Herboldsheimer, 276 Md. 211, 345 A.2d 855 (1975).

Maryland Automobile Insurance Fund must be considered an agency of the State within the meaning of the Public Information Act. 62 Op. Att'y Gen. 579 (1977).

Hospital held to be an agency of the city and, therefore, subject to the public information law. Moberly v. Herboldsheimer, 276 Md. 211, 345 A.2d 855 (1975).

Computer tapes included within subsection (b). — The provisions in subsection (b) of this section that places other documents, "regardless of physical form of characteristics," in the realm of public records was intended to apply to items such as computer tapes. 63 Op. Att'y Gen. 659 (1978).

Voter registration records open to public inspection pursuant to article 33, § 3-11 (a), are clearly "public records," as defined in Maryland's Public Information Act, and not privileged or made confidential by law. 62 Op. Att'y Gen. 396 (1977).

Police records must be considered "public records" in light of subsection (b). 57 Op. Att'y Gen. 518 (1972).

"Arrest logs" are public records. 63 Op. Att'y Gen. 543 (1978).

Police investigative report is a "public record" that is subject to disclosure to "any person," including members of the press, under the Public Information Act, unless refusal to disclose it is mandated or permitted by one of the statutory exceptions to the Act or otherwise by law. 64 Op. Att'y Gen. (April 26, 1979).

Filing with local board of education of names and addresses of all pupils attending school in a particular county would constitute a public record within the meaning of subsection (b) of this section. 59 Op. Att'y Gen. 586 (1974).

Records enumerated in article 81, § 45 (d), are protected from disclosure. 62 Op. Att'y Gen. 712 (1977).

Applied in C.T. Hellmuth & Assocs. v. Washington Metropolitan Area Transit Auth., 414 F. Supp. 408 (D. Md. 1976); Superintendent, Md. State Police v. Henschen, 279 Md. 468, 369 A.2d 558 (1977).

Cited in Baumgartner v. State, 21 Md. App. 251, 319 A.2d 592 (1974).

§ 1A. Only relevant and necessary information to be maintained; public access.

The State, counties, municipalities, and political subdivisions, or any agencies thereof, may maintain only such information about a person as is relevant and necessary to accomplish a purpose of the governmental entity or agency which is authorized or required to be accomplished by statute, executive order of the Governor or the chief executive of a local jurisdiction, judicial rule, or other legislative mandate. Moreover, all persons are entitled to information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To this end, the provisions of this act shall be construed in every instance with the view toward public access, unless an unwarranted invasion of the privacy of a person in interest would result therefrom, and the minimization of costs and time delays to persons requesting information. (1978, ch. 1006.)

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§ 2. Inspection of public records generally; rules and regulations; procedure when records not immediately available; special provisions as to Charles County.

(a) All public records shall be open for inspection by any person at reasonable times, except as provided in this article or as otherwise provided by law. The official custodian of any public record shall make and publish such rules and regulations with reference to the timely inspection and production of such record as shall be reasonably necessary for the protection of such record and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(b) If the public records requested are not in the custody or control of the person to whom written application is made, such person shall, within ten working days of the receipt of the request, notify the applicant of this fact and if known, the custodian of the record and the location or possible location thereof.

(c) If the public records requested are in the custody and control of the person to whom written application is made but are not immediately available, the custodian shall, within ten working days of the receipt of the request, notify the applicant of this fact and shall set forth a date and hour within a reasonable time at which time the record will be available for the exercise of the right given by this article.

(d) In Charles County, except for records kept by officials, agencies, or departments of the State of Maryland, public information shall be regulated by § 6 of this article. (1970, ch. 698; 1972, ch. 601; 1974, ch. 239; 1978, ch. 1006.)

Applicability of Act. — The Maryland Freedom of Information Act applies to all members of the general public and does not make exception for any segment thereof. 58 Op. Att'y Gen. 53 (1973).

Maryland, Virginia and District of Columbia freedom of information laws compared. — See C.T. Hellmuth & Assocs. v. Washington Metropolitan Area Transit Auth., 414 F. Supp. 408 (D. Md. 1976).

Application of article to Washington Metropolitan Area Transit Authority. — Where Maryland, Virginia and the District of Columbia entered a Washington Metropolitan Area Transit Authority Compact, the mere fact that Virginia and the District have adopted freedom of information laws can hardly be taken as a tacit agreement on their part that the Washington Metropolitan Area Transit Authority should be governed by the Maryland law, particularly in view of the fact that this article was enacted subsequent to the Virginia and District of Columbia laws. C.T. Hellmuth & Assocs. v. Washington Metropolitan Area Transit Auth., 414 F. Supp. 408 (D. Md. 1976).

Maryland may not unilaterally subject the Washington Metropolitan Area Transit Authority to the provisions of this article. C.T. Hellmuth & Assocs. v. Washington Metropolitan Area Transit Auth., 414 F. Supp. 408 (D. Md. 1976).

Inspection of marriage records. — The Public Information Act does not in general authorize a clerk of court to deny public

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inspection of marriage records, no matter what their intended use. 61 Op. Att'y Gen. 702 (1976).

Records of tax assessment appeal boards. — The Public Information Act requires the tax assessment appeal boards to permit any person, at reasonable times, to inspect any of its records, except those enumerated in article 81, § 45 (d). 62 Op. Att'y Gen. 712 (1977).

Monthly mileage records filed in vehicle office of local health department are available to the public under the Act. 60 Op. Att'y Gen. 498 (1975).

Information relating to legal fees paid by the Maryland Automobile Insurance Fund to individual defense counsel engaged to represent the agency or its insured must be divulged, upon demand, under the provisions of the Public Information Act. 62 Op. Att'y Gen. 579 (1977).

Cited in Green v. State, 25 Md. App. 679, 337 A.2d 729 (1975).

§ 3. Custodian to allow inspection of public records; exceptions; denial of right of inspection of certain records; court order restricting disclosure of records ordinarily open to inspection.

(a) The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one or more of the following grounds or as provided in subsection (b) or (c) of this section:

(i) Such inspection would be contrary to any State statute;

(ii) Such inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law;

(iii) Such inspection is prohibited by rules promulgated by the Court of Appeals, or by the order of any court of record; or

(iv) Such public records are privileged or confidential by law.

(b) The custodian may deny the right of inspection of the following records or appropriate portions thereof, unless otherwise provided by law, if disclosure to the applicant would be contrary to the public interest:

(i) Records of investigations conducted by, or of intelligence information or security procedures of, any sheriff, county attorney, city attorney, State's attorney, the Attorney General, police department, or any investigatory files compiled for any other law-enforcement, judicial, correctional, or prosecution purposes, but the right of a person in interest to inspect the records may be denied only to the extent that the production of them would (A) interfere with valid and proper law-enforcement proceedings, (B) deprive another person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source, (E) disclose investigative techniques and procedures, (F) prejudice any investigation, or (G) endanger the life or physical safety of any person;

(ii) Test questions, scoring keys, and other examination data pertaining to administration of licenses or employment or academic examinations; except that written promotional examinations and the scores or results thereof shall be available for inspection, but not copying or reproduction, by the person in interest after the conducting and grading of any such examination;

(iii) The specific details of bona fide research projects being conducted by an institution of the State or a political subdivision, except that the name, title, expenditures, and the time when the final project summary shall be available;

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(iv) The contents of real estate appraisals made for the State or a political subdivision thereof, relative to the acquisition of property or any interest in property for public use, until such time as title of the property or property interest has passed to the State or political subdivision, except that the contents of such appraisal shall be available to the owner of the property at any time, and except as provided by statute.

(v) Interagency or intraagency memorandums or letters which would not be available by law to a private party in litigation with the agency.

(c) The custodian shall deny the right of inspection of the following records or any portion thereof, unless otherwise provided by law:

(i) Medical, psychological, and sociological data on individual persons, exclusive of coroners' autopsy reports;

(ii) Adoption records or welfare records on individual persons;

(iii) Personnel files except that such files shall be available to the person in interest, and the duly elected and appointed officials who supervise the work of the person in interest. Applications, performance ratings and scholastic achievement data shall be available only to the person in interest and to the duly elected and appointed officials who supervise his work;

(iv) Letters of reference;

(v) Trade secrets, information privileged by law, and confidential commercial, financial, geological, or geophysical data furnished by or obtained from any person;

(vi) Library, archives, and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of such contribution;

(vii) Hospital records relating to medical administration, medical staff, personnel, medical care, and other medical information, whether on individual persons or groups, or whether of a general or specific classification;

(viii) School district records containing information relating to the biography, family, physiology, religion, academic achievement, and physical or mental ability of any student except to the person in interest or to the officials duly elected and appointed to supervise him;

(ix) Circulation records maintained by public libraries showing personal transactions by those borrowing from them; and

(x) The home address or telephone number of any employee of the State or any agency, instrumentality, or political subdivision of this State, whether in the classified or nonclassified service, except with the permission of the employee, unless the governmental entity which employs the person has determined that disclosure of the address or number is necessary to protect the public interest.

(d) Whenever the custodian denies a written request for access to any public record or any portion thereof under this section, the custodian shall provide the applicant with a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied and all remedies for review of this denial available under this article. The statement shall be furnished to the applicant within ten working days of denial. In addition, any reasonably severable portion of a record shall be provided to any

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person requesting such record after deletion of those portions which may be withheld from disclosure.

(e) If, in the opinion of the official custodian of any public record which is otherwise required to be disclosed under this article, disclosure of the contents of said record would do substantial injury to the public interest, the official custodian may temporarily deny disclosure pending a court determination of whether disclosure would do substantial injury to the public interest provided that, within ten working days of the denial the official custodian applies to the circuit court of the county where the record is located or where he maintains his principal office for an order permitting him to continue to deny or restrict such disclosure. The failure of the official custodian to apply for a court determination following a temporary denial of inspection will result in his becoming subject to the sanctions provided in this article for failure to disclose authorized public records required to be disclosed. After hearing, the court may issue such an order upon a finding that disclosure would cause substantial injury to the public interest. The person seeking permission to examine the record shall have notice of the application sent to the circuit court served upon him in the manner provided for service of process by the Maryland Rules of Procedure and shall have the right to appear and be heard. (1970, ch. 698; 1971, chs. 421, 611; 1972, ch. 24; 1974, ch. 216; ch. 683, § 5; 1978, ch. 1006; 1980, ch. 146.)

Effect of amendment. — The 1980 amendment, approved Apr. 22, 1980, and effective from date of passage, eliminated "and" at the end of paragraph (viii) in subsection (c), substituted a semicolon for a period and added "and" at the end of paragraph (ix) and added paragraph (x) in that subsection.

Due process considerations regarding availability of document. — A particular document may not be available to "any person" under this section in light of the exceptions, but procedural due process requirements may yet make that same document available to a party, or unavailable for use against a party, in an administrative or judicial proceeding. Superintendent, Md. State Police v. Henschen, 279 Md. 468, 369 A.2d 558 (1977).

General right of inspection under subsection (a) of this section is not limited to a "person aggrieved" or "person in interest." Superintendent, Md. State Police v. Henschen, 279 Md. 468, 369 A.2d 558 (1977).

Exemptions in this section do not create privileges for purposes of discovery. Boyd v. Gullett, 64 F.R.D. 169 (D. Md. 1974).

Determination whether disclosure is contrary to the public interest in subsection (b) (i) is within the discretion of the custodian. 64 Op. Att'y Gen. (April 26, 1979).

In determining whether, in an individual case, disclosure would result in one of the consequences listed in subsection (b) (i) of this section, or some other consequence that would make a disclosure contrary to the public interest, the custodian cannot simply state that this is so. Rather, he must carefully consider whether that consequence is likely or possible and, then, objectively balance that possibility (and the conclusion that the disclosure would be contrary to the public interest) against the asserted public interest in favor of disclosure. 64 Op. Att'y Gen. (April 26, 1979).

A custodian need not find that any of the consequences listed in subsection (b) (i) of this section will result from disclosure in order for disclosure to be "contrary to the public interest," but if a custodian does determine that disclosure will have one of the consequences listed in subsection (b) (i) of this section, he may reasonably conclude, that, a fortiori, it is "contrary to the public interest." 64 Op. Att'y Gen. (April 26, 1979).

Purposes of investigatory records in subsection (b) (i) distinguished. — The language of subsection (b) (i) of this section, and particularly the use of the word "other" before "law-enforcement," suggests that the legislature believed that investigatory records of one of the enumerated law-enforcement agencies were presumptively for law-enforcement or prosecution purposes, but that investigatory records compiled by other agencies might or might not be for such purposes. Superintendent, Md. State Police v. Henschen, 279 Md. 468, 369 A.2d 558 (1977).

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not exempt from the general requirement of disclosure under this article and therefore must be disclosed to the public upon request. 59 Op. Att'y Gen. 59 (1974).

Inspection of marriage records. — The Act does not in general authorize a clerk of court to deny public inspection of marriage records, no matter what their intended use, as the records are not subject to a specified exemption. 61 Op. Att'y Gen. 702 (1976).

Records of tax assessment appeal boards. — The Public Information Act requires the tax assessment appeal boards to permit any person at reasonable times to inspect any of its records except those enumerated in article 81, § 45 (d). 62 Op. Att'y Gen. 712 (1977).

Autopsy reports may be obtained from the custodian of such reports under the Public Information Act. 63 Op. Att'y Gen. 659 (1978).

Police documents. — Information necessary to complete an investigation of alleged brutality against individual police officers sought by the Human Relations Commission through subpoena for police records is barred under this article. Prince George's County v. State of Md. Comm'n on Human Relations, 40 Md. App. 473, 392 A.2d 105 (1978).

Since "arrest logs" are not "records of investigation" or "investigatory files," the exemption contained in subsection (b) (i) of this section does not apply. 63 Op. Att'y Gen. 543 (1978).

Police investigative report is a "public record" that is subject to disclosure to "any person," including members of the press, under the Public Information Act, unless refusal to disclose it is mandated or permitted by one of the statutory exceptions to the Act or otherwise by law. 64 Op. Att'y Gen. (April 26, 1979).

Investigative report used for grand jury proceeding. — State's attorney is neither required nor authorized to disclose police investigative report or any part of it which report was used for grand jury proceeding. 64 Op. Att'y Gen. (April 26, 1979).

In consolidation of Public Safety Data Center with Baltimore Computer Utility, the Secretary of Public Safety and Correctional Services would continue, for the purposes of the Public Information Act, to be the "official custodian" of the criminal history records stored in the shared system and the Maryland State Police would continue to be the "custodians" of such records. 63 Op. Att'y Gen. 197 (1978).

§ 4. Copies, printouts and photographs of public records.

(a) In all cases in which a person has the right to inspect any public records such person shall have the right to be furnished copies, printouts, or photographs for a reasonable fee to be set by the official custodian. Where fees for certified copies or other copies, printouts, or photographs of such record are specifically prescribed by law, such specific fees shall apply.

(b) If the custodian does not have the facilities for making copies, printouts, or photographs of records which the applicant has the right to inspect, then the applicant shall be granted access to the records for the purpose of making copies, printouts, or photographs. The copies, printouts, or photographs shall be made while the records are in the possession, custody, and control of the custodian thereof and shall be subject to the supervision of such custodian. When practical, they shall be made in the place where the records are kept, but if it is impractical to do so, the custodian may allow arrangements to be made for this purpose. If other facilities are necessary the cost of providing them shall be paid by the person desiring a copy, printout, or photograph of the records. The official custodian may establish a reasonable schedule of times for making copies, printouts, or photographs and may charge a reasonable fee for the services rendered by him or his deputy in supervising the copying, printingout, or photographing as he may charge for furnishing copies under this section. (1970, ch. 698; 1978, ch. 1006.)

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§ 5. Administrative review; judicial enforcement; civil liability; personnel disciplinary action; criminal liability; immunity from criminal or civil penalties.

(a) Except in cases of temporary denials under § 3 (e) of this subtitle any applicant denied the right to inspect public records where the official custodian of the records is an agency subject to the provisions of Subtitle 24 of Article 41 of this Code may ask for an administrative review of this decision in accordance with § 251 through 254 of Article 41 of this Code, however, this remedy need not be exhausted prior to filing suit in the circuit court pursuant to this article.

(b) (1) On complaint of any person denied the right to inspect any record covered by this article, the circuit court in the jurisdiction in which the complainant resides, or has his principal place of business, or in which the records are situated, has jurisdiction to enjoin the State, any county, municipality, or political subdivision, any agency, official or employee thereof, from withholding records and to order the production of any records improperly withheld from the complainant. In such a case, the court may examine the contents of the records in camera to determine whether the records or any part thereof may be withheld under any of the exemptions set forth in § 3, and the burden is on the defendant to sustain its action. In carrying this burden the defendant may submit to the court for review a memorandum justifying the withholding of the records.

(2) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within 30 days after service upon the defendant of the pleading in which the complaint is made, unless the court otherwise directs for good cause shown.

(3) Except as to cases the court considers of greater importance, proceedings before the court, as authorized by this section, and appeals therefrom shall take precedence on the docket over all other cases and shall be heard at the earliest practicable date and expedited in every way.

(4) In addition to any other relief which may be granted to a complainant, in any suit brought under the provisions of this section in which the court determines that the defendant has knowingly and wilfully failed to disclose or fully disclose records and information to any person who, under this article, is entitled to receive it, and the defendant knew or should have known that the person was entitled to receive it, any defendant governmental entity or entities shall be liable to the complainant in an amount equal to the sum of the actual damages sustained by the individual as a result of the refusal or failure and such punitive damages as the court deems appropriate.

(5) In the event of noncompliance with an order of the court, the court may punish the responsible employee for contempt.

(6) The court may assess against any defendant governmental entity or entities reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the court determines that the applicant has substantially prevailed.

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(c) Whenever the court orders the production of any records improperly withheld from the applicant, and in addition, finds that the custodian acted arbitrarily or capriciously in withholding the public record, the court shall forward a certified copy of its finding to the appointing authority of the custodian. Upon receipt thereof, the appointing authority shall, after appropriate investigation, take such disciplinary action as is warranted under the circumstances.

(d) Any person who wilfully and knowingly violates the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed $100.

(e) Criminal or civil penalties may not be imposed upon a custodian who transfers or discloses the content of any public record to the Attorney General as provided in the "employee disclosure and confidentiality protection" subtitle of Article 64A. (1970, ch. 698; 1971, ch 611; 1978, ch. 1006; 1980, ch. 850.)

Effect of amendment. — The 1980 amendment, effective July 1, 1980, added subsection (e).

In camera review provision of subsection (b) (1) is discretionary and does not mandate that documents be individually examined. Equitable Trust Co. v. State of Md. Comm'n on Human Relations, 42 Md. App. 53, 399 A.2d 908 (1979), rev'd on other grounds, 287 Md. 80, 411 A.2d 86 (1980).

Cited in Superintendent, Md. State Police v. Henschen, 279 Md. 468, 369 A.2d 558 (1977).

Maryland Rules of Procedure

Rule 1218. Court Information System.

a. *Report of Docketing and Disposition of Cases.*

The clerk shall promptly transmit to the Administrative Office of the Courts in a manner prescribed by the State Court Administrator the data elements concerning the docketing and disposition of criminal, juvenile and civil cases as may be designated by the State Court Administrator.

b. *Reporting and Transmittal of Criminal History Record Information.*

1.

The Administrative Office of the Courts shall transmit to the Central Repository of Criminal History Record Information of the Department of Public Safety and Correctional Services the data elements of criminal history record information on offenses agreed to by the Secretary of the Department of Public Safety and Correctional Services and the Chief Judge of the Court of Appeals or his designee for purposes of completing a criminal history record maintained by the Central Repository of Criminal History Record Information.

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2. Transmittal of Reports of Dispositions.

(a) Within 15 days after the conviction, forfeiture of bail, dismissal of an appeal or an acquittal in any case involving a violation of the Maryland Vehicle Law or other traffic law or ordinance, or any conviction for manslaughter or assault committed by means of an automobile, or of any felony involving the use of an automobile, the clerk of the court shall forward to the State Motor Vehicle Administration a certified abstract of the record on a form furnished by the State Motor Vehicle Administration.

(b) When a defendant has been charged by citation and a conviction is entered by reason of his payment of a fine or forfeiture of collateral or bond before trial, the conviction is not a reportable event under Article 27, Section 747 (a) (10), Annotated Code of Maryland.

c. *Inspection of Criminal History Record Information Contained in Court Records of Public Judicial Proceedings.*

Unless expunged, sealed, marked confidential or otherwise prohibited by statute, court rule or order, criminal history record information contained in court records of public judicial proceedings is subject to inspection by any person at the times and under conditions as the clerk of a court reasonably determines necessary for the protection of the records and the prevention of unnecessary interference with the regular discharge of the duties of his office.
(Added June 30, 1973, effective July 1, 1973; amended Nov. 4, 1977, effective Jan. 1, 1978; Dec. 21, 1977, effective Jan. 1, 1978.)

Committee note. — This Rule does not contemplate the reporting of parking violations.

Cross references. — See Code (1974, 1976 Cum. Supp.), Courts and Judicial Proceedings Article, §§ 2-203 and 13-101 (d) and (e), Code (1976, 1977 Cum. Supp.), Article 27, §§ 743, 747, 748, and Code (1975), Article 76A, §§ 2 and 3.

For definition of court records see Rule EX1 d (Definitions — Court Records).

Effect of amendments. — The first 1977 amendment rewrote the Rule heading, eliminated former section a and the cross reference and committee note which followed it, added present section a, rewrote the section heading for section b, added subsection 1 therein, designated the former provisions of section b as subsection 2, substituted "any case involving a violation of the Maryland Vehicle Law or other traffic law or ordinance, or any conviction for manslaughter or assault committed by means of an automobile, or of any felony involving the use of an automobile" for "a proceeding covered by section a. of this Rule" therein and added the subsection heading.

The second 1977 amendment eliminated "— Reporting and Transmittal of Data" at the end of the Rule heading, changed the heading for section b from "Transmittal of Data to Authorized Users" to "Reporting and Transmittal of Criminal History Record Information," eliminated the former heading "Transmittal of Criminal History Record Information" for subsection 1 in section b, added "on offenses" in that subsection, eliminated "in Motor Vehicle Cases" at the end of the heading for subsection 2, designated the former provisions of that subsection as paragraph (a), added paragraph (b), added section c and substituted the present cross references for the former cross reference following the Rule.

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Title 12
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

Subtitle 06 STATE POLICE

Chapter 08 Implementation of the Criminal Justice Information System Statute

Authority: Article 27, §746, Annotated Code of Maryland

.01 Purpose of Regulations.

The purpose of these regulations is to implement the provisions of Article 27, §§742—755, Annotated Code of Maryland.

.02 Applicability of Regulations.

These regulations apply only to the executive branch of State government and local criminal justice agencies other than those in the judicial branch of government.

.03 Definitions.

A. "Collection" refers to the receipt, organization, and processing of CHRI by a criminal justice agency, a criminal justice repository, or CRCR.

B. "Conviction criminal history record information" means CHRI regarding reportable events which have resulted in a finding of guilt. For the purpose of dissemination, the acceptance of a plea of nolle contendere by a court shall be considered as conviction CHRI.

C. "Criminal history record information (CHRI)" means data initiated or collected by a criminal justice agency on a person pertaining to a reportable event. The term does not include:

(1) Data contained in intelligence or investigatory files or police work-product records used solely for police investigation purposes;

(2) Data pertaining to a proceeding under Title 3, Subtitle 8, of the Courts and Judicial Proceedings Article (Juvenile Causes) of the Annotated Code of Maryland, but it does include data pertaining to a person following waiver of jurisdiction by a juvenile court,

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(3) Wanted posters, police blotter entries, court records of public judicial proceedings, or published court opinions;

(4) Data pertaining to violations of the traffic laws of the State or any other traffic law, ordinance, or regulation, or violations of local ordinances, or State or local regulations, or violations of the Natural Resources Article, unless the individual is arrested on a bench warrant issued for failure to appear in court or obey a court order for any of these violations, or unless the individual is committed to a correctional facility upon conviction for any of these violations;

(5) Data concerning the point system established by the Motor Vehicle Administration in accordance with the provisions of Title 16, Subtitle 4, of the Transportation Article of the Annotated Code of Maryland;

(6) Presentence investigation and other reports prepared by a probation department for use by a court in the exercise of criminal jurisdiction or by the Governor in the exercise of his power of pardon, reprieve, commutation, or nolle prosequi; or

(7) Data contained in current case-in-progress systems or records pertinent to public judicial proceedings which are reasonably contemporaneous to the event to which the information relates.

D. "Criminal justice agency" means any government agency or subunit of an agency which is authorized by law to exercise the power of arrest, detention, prosecution, adjudication, correctional supervision, rehabilitation, or release of persons suspected, charged, or convicted of a crime and which allocates a substantial portion of its annual budget to any of these functions. The term does not include the Juvenile Services Administration or a juvenile court, but it does include the following agencies, when exercising jurisdiction over criminal matters or criminal history record information:

(1) State, county, and municipal police departments and agencies, sheriffs' offices, correctional facilities, parole and probation departments, jails and detention centers,

(2) The Offices of the Attorney General, the State's Attorneys, and any other person authorized by law to prosecute persons accused of criminal offenses;

(3) The Administrative Office of the Courts, the Court of Appeals, the Court of Special Appeals, the circuit courts, including the courts of the Supreme Bench of Baltimore City, the District Court of Maryland, and the offices of the clerks of these courts.

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E. "Criminal justice information system" means the equipment, facilities, procedures, agreements, and personnel used in the collection, processing, preservation, and dissemination of CHRI.

F. "Disseminate" means to transmit CHRI in any oral or written form. The term does not include:

(1) The transmittal of this information within a criminal justice agency;

(2) The reporting of this information as required by Article 27, §747, Annotated Code of Maryland; or

(3) The transmittal of this information between criminal justice agencies in order to permit the initiation of subsequent criminal justice proceedings against a person relating to the same offense.

G. "Non-conviction criminal history record information" means arrest information without disposition if an interval of 1 year has elapsed from the date of arrest and no active prosecution of the charge is pending; or information disclosing that the police have elected not to refer a matter to a prosecutor; or that a prosecutor has elected not to commence criminal proceedings; or that proceedings have been indefinitely postponed; as well as all acquittals and all dismissals.

H. "Reportable event" means an event specified or provided for in Article 27, §747, Annotated Code of Maryland.

I. "Reporting" means the transmittal of CHRI by criminal justice agencies or repositories to the Criminal Records Central Repository (CRCR).

.04 Criminal Records Central Repository (CRCR).

A. Pursuant to Article 27, §747(b), Annotated Code of Maryland, the criminal justice information system central repository will be the "Criminal Records Central Repository (CRCR)" of the Maryland State Police. The CRCR will perform all functions heretofore assigned to the State Central Crime Records Bureau, and other tasks delegated to it by the Secretary to ensure the accuracy, completeness, and security of CHRI in Maryland.

B. The CRCR has the responsibility to enter into agreements with agencies which, by law or regulatory process, have the right to access or contribute to CHRI. Each agreement will comply with Article 27, §748, Annotated Code of Maryland and will require the approval of the Secretary.

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C. The CRCR has the authority to perform audits of any criminal justice agency with respect to any individual CHRI to ensure the completeness and accuracy of information reported or disseminated.

D. The CRCR has the authority to inspect and evaluate the procedures and facilities relating to the privacy and security of CHRI in any agency bound by these regulations and to enforce the sanctions agreed upon with the CRCR.

E. The CRCR has the authority to deny a criminal justice agency access to any CHRI unless access is in accordance with an approved agreement.

F. The CRCR has the authority to refuse acceptance of any CHRI unless the information is submitted in accordance with an approved agreement.

.05 Right of an Individual to Inspect His Criminal History Record.

A. A person may inspect criminal history record information concerning him maintained by a criminal justice agency, unless the information or any part of it is relevant to a pending criminal proceeding. This latter restriction does not affect any right of inspection and discovery permitted by rule of court or by statute.

B. A fee of $5, payable to the Maryland State Police, will be charged an individual for each request to review his record, unless the individual files a verified certificate of indigency.

C. If an individual wishes to file a request and subsequently review his criminal history record at the CRCR, he may do so at the following barracks of the Maryland State Police between the hours of 9 a.m. and 3 p.m., Monday through Friday, except on State holidays. An individual may review and challenge his record only at the barrack listed beside the county in which he resides or at the CRCR located at the Maryland State Police Headquarters in Pikesville, Maryland.

Allegany County	Barrack "C" MSP Cumberland, Maryland
Anne Arundel County	Barrack "J" MSP Annapolis, Maryland
Baltimore City	Headquarters, MSP Pikesville, Maryland

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Baltimore County	Headquarters, MSP Pikesville, Maryland
Calvert County	Barrack "H" MSP Waldorf, Maryland
Caroline County	Barrack "I" MSP Easton, Maryland
Carroll County	Barrack "G" MSP Westminster, Maryland
Cecil County	Barrack "F" MSP North East, Maryland
Charles County	Barrack "H" MSP Waldorf, Maryland
Dorchester County	Barrack "E" MSP Salisbury, Maryland
Frederick County	Barrack "B" MSP Frederick, Maryland
Garrett County	Barrack "C" MSP Cumberland, Maryland
Harford County	Barrack "D" MSP Bel Air, Maryland
Howard County	Barrack "A" MSP Jessup, Maryland
Kent County	Barrack "I" MSP Easton, Maryland
Montgomery County	Barrack "N" MSP Rockville, Maryland
Prince George's County	Barrack "L" MSP Forrestville, Maryland
Queen Anne's County	Barrack "I" MSP Easton, Maryland
St. Mary's County	Barrack "H" MSP Waldorf, Maryland
Somerset County	Barrack "E" MSP Salisbury, Maryland
Talbot County	Barrack "I" MSP Easton, Maryland
Washington County	Barrack "O" MSP Hagerstown, Maryland
Wicomico County	Barrack "E" MSP Salisbury, Maryland
Worcester County	Barrack "E" MSP Salisbury, Maryland

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D. Until all criminal history data is filed at the CRCR, an individual may file a request and subsequently review that part of his criminal history record maintained by a criminal justice agency other than the CRCR. This request and review is subject to the procedures of the criminal justice agency which maintains the record. Each criminal justice agency which maintains criminal history record information will adopt procedures for individual review and challenge of that information. These procedures will be in compliance with applicable federal and State law and regulations.

E. An offender held in custody at a law enforcement agency, detention center, or correctional institution as the result of a court action may file a request and subsequently review his criminal history record at the location of his confinement.

F. Before an individual may review his record he will verify his identity by fingerprint comparision with the CRCR record through the use of Form CRCR001.

G. Any attorney may review his client's criminal history record if he satisfactorily establishes his identity and presents a written authorization from his client.

H. Form CRCR001, properly completed and including the individual's right thumbprint or other available print if the right thumb cannot be fingerprinted, will be forwarded to the CRCR for identification, verification, and record check.

I. The CRCR will verify the identity of the applicant.

J. Upon confirmation of the applicant by fingerprint comparison and other available identifiers, the CRCR will complete Form CRCR001 and return it and a copy of any record information within 30 days to the agency or barrack which submitted the request.

K. The CRCR or other agency possessing the individual's criminal history record may deny review of a record if, in its opinion, the individual cannot satisfactorily identify himself as the subject of that record, or if the individual is not entitled to review the record under the limitations set forth in Article 27, §752(f), Annotated Code of Maryland. The reason for denial will be indicated on Form CRCR001 by the CRCR or other agency which denies access and shall be returned to the individual within 30 days. The individual will be advised in writing of his right to appeal the denial of review.

L. The CRCR will retain a copy of Form CRCR001.

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M. When an individual returns to review his criminal history record, he shall countersign Form CRCR001. An individual inspecting his criminal history record may make notes of the information or may obtain a certified copy at his expense.

N. A person who challenges his criminal history record information may challenge the completeness, the contents, the accuracy, or the dissemination of this information.

.06 Right of an Individual to Challenge a Denial to Inspect.

A. If an individual is denied the right to inspect his criminal history record, pursuant to the procedures in Regulation .05 above, he may challenge this denial in accordance with the procedures in this regulation. This regulation does not pertain to court procedures or court records where inspection has been denied by the courts.

B. A fee of $5 payable to the Maryland State Police will be charged an individual for each request to challenge his record, unless the individual files a verified certificate of indigency.

C. An individual shall file a challenge to a denial of his request to inspect his record by submitting Form CRCR002 and a complete set of fingerprints taken at the location of his original request by the original agency or by the Maryland State Police at the identified barrack. An individual shall file a challenge within 10 days of the denial to inspect his record.

D. The Superintendent of the Maryland State Police has the authority to designate a review officer.

E. The Superintendent of the Maryland State Police shall set a review date within 30 days of the date the challenge was filed, and within the 30-day period the full set of fingerprints submitted by the person who challenged the record will be compared with the fingerprints on the arrest record.

F. The Superintendent of the Maryland State Police will issue to the individual and to the CRCR a written decision stating whether the individual filing the challenge is the individual in the record. A copy of the decision will be retained by the CRCR and copies will be disseminated by the CRCR to any other agency which is a party to the denial process.

G. If the Superintendent decides that the challenger is identical to the individual in the record, the challenger may, upon submission of the written decision of the Superintendent to the official who denied access to the record, view his record.

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H. If the Superintendent decides that the challenger is not the individual in the record, the challenger may not be permitted to inspect the record.

I. The challenger or the agency maintaining the record may appeal the decision of the Superintendent, and this appeal shall be taken in accordance with the Administrative Procedure Act, Article 41, §244, et. seq., Annotated Code of Maryland.

.07 Right of an Individual to Challenge Completeness, Contents, Accuracy, and Dissemination.

A. An individual who has inspected his criminal history record information may challenge the completeness, contents, accuracy, or dissemination of this information.

B. A fee of $5, payable to the Maryland State Police, shall be charged an individual for each challenge to the completeness, contents, accuracy, and dissemination of his criminal history record, unless the individual files a verified certificate of indigency.

C. The individual will submit Form CRCR002 as notice of his challenge to the CRCR and to the agency at which he inspected the information, if other than the Maryland State Police. Upon receipt of the notice, the CRCR will conduct an examination of that part of the person's criminal history record information which has been challenged as to completeness, contents, accuracy, and dissemination. As part of the examination, the CRCR may require any criminal justice agency that was the source of challenged information to verify the information. The CRCR will advise the person of the results of its examination and its determination within 90 days after receipt of the individual's notice of challenge. This notice shall be in writing via Form CRCR003 and, if the challenge or any part of it is rejected, the notice will inform the person of his rights of appeal.

D. If the challenge is determined to be valid, the CRCR will make the appropriate correction on its record and notify any criminal justice or other agency which has custody of the incomplete or inaccurate information, of this correction. The criminal justice agency shall correct its records and certify to the CRCR that the correction was made.

E. A criminal justice agency or other agency required to correct any criminal history record information that had previously disseminated this incorrect information shall give written notice of the correction to any agency or individual to whom the information had

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been disseminated. The recipient agency or individual will promptly make the correction on its records, and certify to the disseminating agency that the correction was made.

F. If the individual's challenge to the completeness, contents, accuracy, or dissemination is denied by the CRCR, he may appeal the decision in accordance with the procedures outlined below.

G. A fee of $5, payable to the Maryland State Police, will be charged an individual for each request to appeal a denial of his record, unless the individual files a verified certificate of indigency.

H. Within 30 days of a denial, an individual will file Form CRCR002 to appeal a denial of a challenge with the Superintendent of the Maryland State Police and the local law enforcement agency which contributed or created the record, if other than the Maryland State Police, and the CRCR.

I. The Superintendent has the authority to designate a hearing officer.

J. The Superintendent of the Maryland State Police shall set a hearing date within 30 days of the date the appeal was filed, and the hearing shall be held within 60 days of the date the appeal was filed.

K. Failure of an applicant to appear at the hearing shall be cause to deny the challenge.

L. At the challenge hearing, the applicant who filed the challenge and any agency party to the challenge may be represented by an attorney, may introduce additional evidence, and may interrogate persons responsible for recording or maintaining the criminal history record in question.

M. The Superintendent of the Maryland State Police shall issue to the applicant and to the CRCR a written order stating the decision of the hearing. A copy of the order shall be retained by the CRCR and disseminated by CRCR to any other agency or person who is party to the hearing.

N. If the Superintendent's order concludes that the challenge to the completeness, contents, accuracy, or dissemination of the record is correct, the order will direct that the record be corrected. The CRCR and the local law enforcement agency which contributed or created the record shall correct its records and certify to the Superintendent that the correction was made.

O. A criminal justice agency required to correct any criminal history record information pursuant to §N, immediately above, that had

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previously disseminated this information, shall give written notice to the agency or person to whom the information was disseminated, of the correction. That agency or person shall promptly make the correction on its records, and certify to the disseminating agency that the correction was made.

F. Any party to the matter may further appeal the decision of the Superintendent, and this appeal shall be taken in accordance with the Administrative Procedure Act, Article 41, §244, et. seq., Annotated Code of Maryland.

.08 Collection.

A. The CRCR will collect and store CHRI from all criminal justice agencies or CHRI repositories in the State.

B. Receipt by CRCR of reported data shall be organized so as to accurately reflect the processing of an individual through the criminal justice system and to insure complete, accurate, private, and secure records.

.09 Reporting.

A. Every criminal justice agency or CHRI repository shall report CHRI, whether collected manually or by means of an automated system, to the CRCR in accordance with the following provisions:

(1) Data pertaining to an arrest or the issuance of an arrest warrant shall be reported within 72 hours after the arrest is made or the warrant is issued whichever first occurs;

(2) Data pertaining to the release of a person after arrest without the filing of a charge shall be reported within 30 days after the person is released;

(3) Data pertaining to any other reportable event shall be reported within 60 days after occurrence of the event.

B. CHRI will be reported by all criminal justice agencies to CRCR in an organized manner that reflects the identification of the offender and the movements of that individual through the criminal justice system. Reports will conform to federal and State laws and regulations as supplemented by operational procedures issued by CRCR relating to the completeness, accuracy, privacy, and security of CHRI.

.10 Dissemination of Criminal History Record Information.

A. A criminal justice agency and the CRCR may not disseminate criminal history record information except in accordance with federal

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and State laws and regulations and the regulations promulgated pursuant to Article 27, §746, Annotated Code of Maryland.

B. Subject to the provisions of §F, below, the CRCR and a criminal justice agency shall disseminate CHRI, be it conviction or non-conviction criminal history record information, to a criminal justice agency upon a request made in accordance with applicable regulations adopted by the Secretary. A criminal justice agency may request this information from the CRCR or another criminal justice agency only if it has a need for the information:

(1) In the performance of its function as a criminal justice agency; or

(2) For the purpose of hiring or retaining its own employees and agents.

C. Subject to the provisions of §§G, H, and I, below, and except as otherwise authorized by §F, below, the CRCR may not disseminate to a non-criminal justice federal, State, or local government agency:

(1) Conviction CHRI unless the person or agency to whom the information is to be disseminated is expressly authorized by statute, ordinance, executive order, or court rule, decision, or order to grant, deny, suspend, revoke, or terminate a license, employment, or other right or privilege, and the statute, ordinance, order, or rule specifies the existence or non-existence of a prior conviction or other criminal conduct as a condition to the grant, denial, suspension, revocation, or termination of the license, employment, right, or privilege. References to "good moral character," "trustworthiness," or other less specific traits are sufficient to authorize dissemination where they are determined by the courts to be inclusive of criminal conduct.

(2) Non-conviction CHRI unless the person or agency to whom the information is to be disseminated is expressly authorized by statute, ordinance, executive order, court rule, decision, or order to grant, deny, suspend, revoke, or terminate a license, employment, or other right or privilege, and the statute, ordinance, executive order, or court rule, decision, or order specifies access to non-conviction CHRI in consideration of the decision to grant, deny, suspend, revoke, or terminate a license, employment, right, or privilege.

D. Subject to the provisions of §§G, H, and I, below, and except as otherwise authorized by §F, below, the CRCR may not disseminate to a private non-governmental employer or the private employer's designated agent:

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(1) Conviction CHRI unless the employer demonstrates to the Secretary that the activities or duties of the prospective employee or employee for whom the conviction CHRI is requested would bring the prospective employee or employee into such close and sensitive contact with the public that the use of the information in hiring, transfer, or promotion of the employee would serve to protect the safety or be in the best interests of the general public or bring the prospective employee or employee into such close and sensitive contact with the employer's enterprise as to endanger the goodwill or fiscal well-being of the enterprise.

(2) Non-conviction CHRI unless the employer is expresaly authorized by statute, ordinance, executive order, or court rule, order, or decision specifying the right of access to non-conviction CHRI and the purpose and conditions for access.

E. The Secretary will establish a procedure whereby employers may petition for the right to be granted access to conviction CHRI consistent with §1D(1), above. The petition shall require the employer to list the instances where access is desired and the reason for requesting the access consistent with this regulation. The Secretary, with the advice of the Advisory Board, shall develop specific classes for which access consistent with this regulation are to be provided and shall maintain for each class a list of all employers who have petitioned for and been granted access.

F. The following non-criminal justice persons and agencies may receive from CRCR conviction and non-conviction CHRI for the purpose and under the conditions stated:

(1) The Department of Personnel or other appointing authority of the federal, State, or local unit of government may receive this information for the purpose of employment suitability or eligibility for security clearances;

(2) The Maryland Public Defender or any defense counsel of record may receive this information for the purpose of the defense of a client in a pending criminal proceeding;

(3) A bail bondsman may receive this information relating to a client, if authorized by the Maryland rules;

(4) The Juvenile Services Administration may receive this information for the purposes of an investigation pursuant to the disposition of a juvenile case;

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(5) The Governor's Commission on Law Enforcement and the Administration of Justice may receive this information for the purposes of research, evaluation, and statistical analysis of criminal activity, and that any statistical analyses derived from this information may not include the name of any individual or any other unique identifiers relating to the individual;

(6) A person or agency engaged in legitimate research, evaluation, or statistical analysis activities may, pursuant to an agreement with the Secretary or the Chief Judge of the Court of Appeals, receive this information necessary to these activities, but this information may not include the name of any individual;

(7) A person or agency under contract with a criminal justice agency to provide specific services required by the criminal justice agency to perform any of its criminal justice functions may, pursuant to an agreement with the Secretary, receive this information necessary in order to carry out its contract; and

(8) The Attorney Grievance Commission and any of its subunits, the Board of Law Examiners and any of its subunits, the Commission on Judicial Disabilities, and a Judicial Nominating Commission may receive and utilize CHRI for the purpose of exercising their respective functions in connection with lawyer discipline, bar admissions, judicial discipline, and judicial selection.

G. Criminal Justice Agency.

(1) A criminal justice agency may not disseminate CHRI to another criminal justice agency until the disseminating agency has requested and received from CRCR verification that the information to be disseminated is complete, accurate, and current. The criminal justice agency or CRCR shall verify the identity of the criminal justice agency to which the disseminating agency intends to provide the information.

(2) CRCR shall maintain a record or log of the request showing the date the request was made, the information to be disseminated, the criminal justice agency receiving the information, and the date of the dissemination.

(3) This section does not apply if the receiving criminal justice agency demonstrates to a responsible official of the disseminating criminal justice agency or CRCR that a delay in the receipt of information from CRCR will unduly impede necessary action by the requesting criminal justice agency or will violate or materially impair a

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substantive right of the person about whom the information is needed. However, the disseminating agency shall maintain a log of each dissemination under these conditions, showing the date of dissemination, the information disseminated, the criminal justice agency to whom it was disseminated, and the date of the dissemination.

H. Only CRCR may disseminate CHRI to a non-criminal justice agency or individual. CRCR shall verify the identity of the agency or person requesting to receive the information and shall maintain a record or log of the request showing the date the request was made, the purpose for which the request was made, the information disseminated, the agency or person receiving the information, and the date of the dissemination.

I. CRCR, through agreement with another criminal justice agency, may specify the other criminal justice agency as a location at which a non-criminal justice agency or individual may inquire to CRCR for the purpose of receiving CHRI. The agreement may also provide for CRCR to authorize the criminal justice agency to disseminate to the non-criminal justice agency appropriate CHRI maintained by the criminal justice agency. Under these circumstances the disseminating criminal justice agency shall maintain a log of each dissemination, showing the date the request was made, the purpose for which the request was made, the information disseminated, the agency or person receiving the information, and the date of the dissemination. CRCR shall maintain in its log the fact that it authorized the criminal justice agency to disseminate the CHRI and the agency or individual to whom the CHRI was disseminated.

J. An agency or individual may not confirm the existence or non-existence of CHRI to any person or agency that would not be eligible to receive the information itself.

K. Any logs required to be kept under this regulation shall be maintained for at least 3 years.

L. The use of CHRI by an authorized agency or individual is limited to the specific purpose or purposes stated in this section and may not be disseminated further except with specific authorization.

M. When a request for the dissemination of CHRI is made by a criminal justice agency from another state, disseminations are to be limited to the purposes for which CHRI is disseminated to criminal justice agencies within Maryland.

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N. In addition to any other remedy or penalty authorized by law, the Secretary may determine any individual or agency to be in violation of the provisions of this regulation and may take the necessary steps to enforce compliance with this section, including revocation of any agreement between the agency and CRCR as well as appropriate judicial or administrative proceedings.

.11 Security.

A. The Secretary adopts the specific federal regulations promulgated regarding security. These regulations were promulgated in the Federal Register, Volume 41, Number 55, dated March 19, 1976, and pursuant to Article 41, §256 H(a) Annotated Code of Maryland, the federal regulations are being reprinted as follows:

"(A) Security—Wherever criminal history record information is collected, stored, or disseminated, each state shall insure that the following requirements are satisfied by security standards established by state legislation or in the absence of such legislation by regulations approved or issued by the Governor of the State:

(1) Where computerized data processing is employed, effective and technologically advanced software and hardware designs are instituted to prevent unauthorized access to such information.

(2) Access to criminal history record information system facilities, systems operating environments, data file contents whether while in use or when stored in a media library, and system documentation is restricted to authorized organizations and personnel.

(3)(A) Computer operations, whether dedicated or shared, which support criminal justice information systems, operate in accordance with procedures developed or approved by the participating criminal justice agencies that assure that:

(i) Criminal history record information is stored by the computer in such manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion by non-criminal justice terminals.

(ii) Operation programs are used that will prohibit inquiry, record updates, or destruction of records, from any terminal other than criminal justice system terminals which are so designated.

(iii) The destruction of records is limited to designated terminals under the direct control of the criminal justice agency responsible for creating or storing the criminal history record information.

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(iv) Operational programs are used to detect and store for the output of designated criminal justice agency employees all unauthorized attempts to penetrate any criminal history record information system, program, or file.

(v) The programs specified in (ii) and (iv) of this subsection are known only to criminal justice agency employees responsible for criminal history record information system control or individuals and agencies pursuant to a specific agreement with the criminal justice agency to provide such programs and the programs) are kept continuously under maximum security conditions.

(vi) Procedures are instituted to assure that an individual or agency authorized direct access is responsible for (a) the physical security of criminal history record information under its control or in its custody and (b) the protection of such information from unauthorized access, disclosure, or dissemination.

(vii) Procedures are instituted to protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters.

(B) A criminal justice agency shall have the right to audit, monitor, and inspect procedures established above.

(4) The criminal justice agency will:

(A) Screen and have the right to reject for employment, based on good cause, all personnel to be authorized to have direct access to criminal history record information.

(B) Have the right to initiate or cause to be initiated administrative action leading to the transfer or removal of personnel authorized to have direct access to such information where such personnel violate the provisions of these regulations or other security requirements established for the collection, storage, or dissemination of criminal history record information.

(C) Institute procedures, where computer processing is not utilized, to assure that an individual or agency authorized direct access is responsible for:

(i) The physical security of criminal history record information under its control or in its custody; and

(ii) The protection of such information from unauthorized access, disclosure, or dissemination.

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(D) Institute procedures where computer processing is not utilized to protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters.

(E) Provide that direct access to criminal history record information shall be available only to authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel essential to the proper operation of the criminal history record information system.

(5) Each employee working with or having access to criminal history record information shall be made familiar with the substance and intent of these regulations."

B. In the event a breach of the physical security of CHRI or a failure to meet physical security standards of CHRI as stipulated in these regulations and as supplemented by operational policies issued by CRCR relating to the physical security of CHRI occurs, the Secretary of Public Safety and Correctional Services has the responsibility to insure that the breach is corrected.

C. In the event a failure to comply with personnel policies relating to CHRI as stipulated in these regulations and as supplemented by personnel policies issued by CRCR relating to CHRI occurs, the Secretary of Public Safety and Correctional Services has the responsibility to insure that this failure is corrected.

D. In the event a breach of the operational security of the Criminal Justice Information System (as defined in Article 27, §743(g), Annotated Code), or a failure to meet the operating security standards of that system as stipulated in these regulations and as supplemented by operational procedures issued by CRCR relating to the security of operations in the Criminal Justice Information System occurs, the Secretary of Public Safety and Correctional Services has the responsibility to insure that this breach or failure is corrected.

E. In the event the privacy or confidentiality of CHRI has been intentionally or inadvertantly abused or where the potential for this abuse may exist, the Secretary of Public Safety and Correctional Services has the responsibility to insure that this abuse or potential for abuse is corrected.

.12 Auditing.

A. An audit of a random representative sample of State and local criminal justice agencies and repositories will be made annually by

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CRCR. The audit shall insure that CHRI is accurate and complete and that it is collected, reported, and disseminated in accordance with the provisions of Article 27, §§742--755, Annotated Code of Maryland. A quality control audit of a representative sample of CHRI will be made on a regular basis.

B. The CRCR will establish the methods, procedures, and standards for auditing criminal justice agencies and CHRI repositories.

C. Criminal justice agencies and CHRI repositories will retain and provide access to CHRI source documents, dissemination logs, security manuals, and other data as CRCR may deem necessary to perform an audit assuring adherence to the privacy, security, completeness, accuracy, and dissemination of CHRI.

D. Each criminal justice agency and CHRI repository will be subject to an on-site audit by CRCR to evaluate that agency's compliance with applicable rules, regulations, agreements, and laws pertaining to physical, personnel, and operational security, dissemination, and completeness and accuracy of CHRI.

E. Each criminal justice agency and CHRI repository will cooperate with CRCR in performing audits required by applicable federal and State laws and regulations.

.13 Agreements.

Agreements will be developed between the CRCR and criminal justice agencies and CHRI repositories which will incorporate the principles and requirements of applicable federal and State laws and regulations pertaining to the privacy, security, completeness, accuracy, and dissemination of CHRI.

Administrative History

Effective date: March 2, 1977 (4:5 Md. R. 384)
Chapter revised effective December 1, 1978 (5:24 Md. R. 1798)

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	6-168			X
2. Privacy and Security Council	6-170			X
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	Reg. 2.13-2.15 6-172(a)	X		X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	Reg. 2.16-2.24 6-172(b)(c)	X		X
3.12 Authorizes to Private Sector	Reg. 2.16-2.24 6-172(b)(c)	X		X
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	Reg. 2.13-2.15 6-172(a)	X		X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	Reg. 2.16-2.24 6-172(b)(c)	X		X
3.22 Authorizes to Private Sector	Reg. 2.16-2.24 6-172(b)(c)	X		X
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	Reg. 2.13-2.15 6-172(a)	X		X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	Reg. 2.16-2.24 6-172(b)(c)	X		X
3.32 Authorizes to Private Sector	Reg. 2.16-2.24 6-172(b)(c)	X		X
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	Reg. 3.1-3.7 6-175	X X		
5. Right to Challenge	6-175 Reg. 3.8-3.12	X X		
6. Judicial Review of Challenged Information	6-176	X		
7. Purging Non-Conviction Information	Reg. 1.21(b)	X		
8. Purging Conviction Information	Reg. 1.21(b)	X		

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information	276-100B; 276-100C Reg. 1.17-1.18 Reg. 1.21(a)	X X X		
10. Sealing Conviction Information	276-100B 94C-34 276-100A	X X		X
11. Removal of Disqualifications	276-100A 276-100C	X X		
12. Right to State Non-Existence of Record	94C-34 276-100A 276-100C	 X X		X
13. Research Access	6-173	X		
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	263-1A 127-23; 127-27	X X		
14.2 Auditing Requirements	6-171	X		
14.3 Other Accuracy/Completeness Requirements	6-171 6-175 66A-2	X X		 X
15. Dedication				
16. Civil Remedies	6-177 Reg. 3.22	X X		
17. Criminal Penalties	6-178			X
18. Public Records	66-10 66A-1	X		 X
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security				
22.1 Physical (Building) Security	Reg. 3.13 6-171	X X		
22.2 Administrative Security	6-171 Reg. 3.16-3.19	X X		
22.3 Computer Security	Reg. 3.18-3.21 6-174	X X		
23. Transaction Logs	6-172			X
24. Training Employees	6-171			
25. Listing of Information Systems				
26. FOIA (Including CJI)	66A-1			X
27. FOIA (Excluding CJI)				
28. Central State Repository	6-168			X

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Massachusetts General Laws Annotated (West)
Chapter 6

CRIMINAL OFFENDER RECORD INFORMATION SYSTEM

§ 167. Definitions

The following words shall, whenever used in this section or in sections one hundred and sixty-eight to one hundred seventy-eight, inclusive, have the following meanings unless the context otherwise requires: "Criminal justice agencies", those agencies at all levels of government which perform as their principal function, activities relating to (a) crime prevention, including research or the sponsorship of research; (b) the apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal offenders; or (c) the collection, storage, dissemination or usage of criminal offender record information.

"Criminal offender record information", records and data in any communicable form compiled by a criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, sentencing, incarceration, rehabilitation, or release. Such information shall be restricted to that recorded as the result of the initiation of criminal proceedings or any consequent proceedings related thereto. Criminal offender record information shall not include evaluative information, statistical and analytical reports and files in which individuals are not directly or indirectly identifiable, or intelligence information. Criminal offender record information shall be limited to information concerning persons who have attained the age of seventeen and shall not include any information concerning criminal offenses or acts of delinquency committed by any person before he attained the age of seventeen; provided, however, that if a person under the age of seventeen is adjudicated as an adult, information relating to such criminal offense shall be criminal offender record information. Criminal offender record information shall not include information concerning any offenses which are not punishable by incarceration.

"Evaluative information", records, data, or reports concerning individuals charged with crime and compiled by criminal justice agencies which appraise mental condition, physical condition, extent of social adjustment, rehabilitative progress and the like, and which are primarily used in connection with bail, pre-trial or post-trial release proceedings, sentencing, correctional and rehabilitative planning, probation or parole.

"Intelligence information", records and data compiled by a criminal justice agency for the purpose of criminal investigation, including reports of informants, investigators or other persons, or from any type of surveillance associated with an identifiable individual. Intelligence information shall also include records and data compiled by a criminal justice agency for the purpose of investigating a substantial threat of harm to an individual, or to the order or security of a correctional facility.

[*See main volume for text of definitions of "Interstate systems" and "Purge"*]

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Amended by St.1977, c. 691, § 2.

1977 Amendment. St.1977, c. 691, § 2, an emergency act, approved Oct. 29, 1977, rewrote the definition of "Criminal offender record information", and inserted definitions of "Evaluative information" and "Intelligence information".

1. In general

Records of firearms discharge reports kept by city police department were not subject to blanket exemption from disclosure under c. 4, § 7 providing for disclosure of public records generally, because they may have contained criminal offender record information. Reinstein v. Police Commissioner of Boston (1979) 391 N.E.2d 881, 1979 Mass.Adv.Sh. 1509.

Newspaper could not complain that provisions of Criminal Offender Records Information Act other than those mandating nondisclosure to public of alphabetical index of criminal records impermissibly interfered with internal functioning of court and thereby violated Const.Pt. 1, Art. 30, requiring separation of powers, as any interference with court's internal functioning did not violate rights of newspaper. New Bedford Standard-Times Pub. Co. v. Clerk of Third Dist. Court of Bristol (1979) 387 N.E.2d 110, 1979 Mass.Adv.Sh. 515.

Section 172 of this chapter providing that alphabetical index of criminal records may not be made available to the public did not unconstitutionally interfere with internal functioning of judicial branch and did not violate Const.Pt. 1, Art. 30 requiring separation of powers, in view of lack of showing that denial of public access to such records impaired ability of court to function and in view of fact that Criminal Offender Record Information Act served useful rehabilitative purpose. Id.

This section, which restricts dissemination of records and data compiled by criminal justice agencies, and § 172 of this chapter, which sets forth procedure for dissemination of such information, did not bar Insurance Commissioner from asking defendant insurance agent about his criminal history in application form for renewal of defendant's insurance broker's license; in any event, nothing in said sections justified defendant in responding falsely to such an inquiry. Com. v. McDuffee (1979) 386 N.E.2d 754, 1979 Mass.App.Adv.Sh. 283.

§ 168. Criminal history systems board; establishment; members; terms; meetings; expenses; regulations; powers and duties; executive director and other employees; reports; funds

There shall be a criminal history systems board hereinafter called the board, consisting of the following persons: the attorney general, the secretary of public safety, the chairman of the Massachusetts defenders committee, the chairman of the parole board, the commissioner of the department of correction, the commissioner of the department of public safety, the commissioner of the department of youth services, the commissioner of probation, the executive director of the committee on criminal justice, and the police commissioner of the city of Boston, or their designees, all of whom shall serve ex officio; and three other persons to be appointed by the governor for a term of three years, one of whom shall represent the Massachusetts district attorneys association, one of whom shall represent the Massachusetts chiefs of police association, and one of whom shall represent the county commissioners and sheriffs association. Upon the expiration of the term of any appointive member, his successor shall be appointed in a like manner for a term of three years.

The governor shall designate annually the chairman of the board from among its members. No chairman may be appointed to serve more than two consecutive terms. The chairman shall hold regular meetings, one of which shall be an annual meeting and shall notify all board members of the time and place of all meetings. Special meetings may be called at any time by a majority of the board members and shall be called by the chairman upon written application of eight or more members. Members of the board shall receive no compensation, but shall receive their expenses actually and necessarily incurred in the discharge of their duties.

The board, after giving the security and privacy council an opportunity to present its advice and recommendations, shall, with the approval of two-thirds of the board members or their designees present and voting, promulgate regulations regarding the collection, storage, access, dissemination, content, organization, and use of criminal offender record information. Rules and regulations shall not be adopted by the board until a hearing has been held in the manner provided by section two of chapter thirty A. The board shall have the authority to issue orders enforcing its rules and regulations after notice and hearing as provided by applicable law.

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The board shall provide for and exercise control over the installation, operation and maintenance of data processing and data communication systems, hereinafter called the criminal offender record information system. Said system shall be designed to insure the prompt collection, exchange, dissemination and distribution of such criminal offender record information as may be necessary for the efficient administration and operation of criminal justice agencies, and to connect such systems directly or indirectly with similar systems in this or other states. The secretary of public safety shall appoint and fix the salary of an executive director, after reviewing final applicants with and securing the approval of the board. Such executive director shall not be subject to the provisions of chapter thirty-one or section nine A of chapter thirty. Said director shall be responsible for all data processing, for the management of the automated criminal offender record information and teleprocessing system, for the supervision of all personnel associated with that system and for the appointment of all such personnel except as otherwise provided by the board. The board may appoint such other employees, including experts and consultants, as it deems necessary to carry out its responsibilities, none of whom shall be subject to the provisions of chapter thirty-one or of section nine A of chapter thirty.

The board shall make an annual report to the governor and file a copy thereof with the state secretary, the clerk of the house of representatives and the clerk of the senate.

The board is authorized to enter into contracts and agreements with, and accept gifts, grants, contributions, and bequests of funds from, any department, agency, or subdivision of federal, state, county, or municipal government and any individual, foundation, corporation, association, or public authority for the purpose of providing or receiving services, facilities or staff assistance in connection with its work. Such funds shall be deposited with the state treasurer and may be expended by the board in accordance with the conditions of the gift, grant, contribution, or bequest, without specific appropriation.

Amended by St.1978, c. 478, § 5; St.1979, c. 702, §§ 1 to 4.

1978 Amendment. St.1978, c. 478, § 5, approved July 18, 1978, and by section 343 made effective July 1, 1978, substituted "administrative justice for the district court department, the administrative justice for the superior court department" for "chief justice of the district courts, the chief justice of the superior court" in the first sentence of the first paragraph.

1979 Amendment. St.1979, c. 702, § 1, an emergency act, approved Nov. 9, 1979, in the first sentence of the first paragraph inserted ", the secretary of public safety,", deleted ", the administrative justice for the district court department, the chief justice of the supreme judicial court," following "parole board" and substituted "committee on criminal justice" for "governor's public safety committee".

Section 2, in the third paragraph, in the first sentence substituted "giving the security and privacy council an opportunity to present its advice and recommendations" for "receiving the advice and recommendations of its advisory committee", inserted "access," and substituted ", content, organization, and use" for "and usage" and added the second and third sentences.

Section 3, in the fourth paragraph, rewrote the third sentence and inserted the fourth and fifth sentences.

Section 4 deleted the seventh paragraph.

Sections 10 to 15 provided:

"Section 10. All books, papers, records, documents, equipment, lands, interests in land, buildings, facilities, and other property, both personal and real, which immediately prior to the effective date of this act, are in the custody of the secretary of administration and finance or any other agency from which powers and duties are transferred to the executive office of public safety by the provisions of this act, and which relate to or are maintained for the purpose of the exercise of such powers or the performance of such duties, are hereby transferred to the secretary of public safety.

"All questions regarding the identification of such property and to whom custody thereof is so transferred shall be determined by the secretary of public safety.

"Section 11. All monies heretofore appropriated by the criminal history systems board and the security and privacy council or to the secretary of administration and finance on behalf of said board or council from which or from whom powers and duties are transferred by the provisions of this act which relate to the exercise of such powers or the performance of such duties, and remaining unexpended on the effective date of this act, are hereby transferred to, and shall be available for expenditure by the secretary of public safety.

"All questions regarding the indentification of such monies shall be determined by the secretary of public safety.

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"Section 12. All duly existing contracts, leases and obligations of the criminal history systems board and the security and privacy council, or of the secretary of administration and finance on behalf of said board or council, from which, or from whom, powers and duties are transferred to the executive office of public safety by this act, which relate to the exercise of such powers or the performance of such duties, and which are in force immediately prior to the effective date of this act, shall thereafter be performed by said board and council as so transferred and the secretary of public safety, as the case may be. This section shall not affect any renewal provision or option to renew contained to any such lease in existence on said effective date, all of which may thereafter be exercised by the secretary of public safety.

"All questions regarding the identification of such contracts, leases and obligations and of the agency or executive office to which the performance thereof is so transferred shall be determined by the secretary of public safety.

"Section 13. All petitions, hearings and other proceedings duly brought before, and all prosecutions and legal and other proceedings duly begun by, the secretary of administration and finance with reference to the functions of the criminal history systems board or the security and privacy council, which are pending immediately prior to the effective date of this act shall continue unabated and remain in force notwithstanding the passage of this act, and, to the extent that the power to determine or bring such proceedings is transferred by this act to the secretary of public safety, they shall be completed before or by said secretary unless a contrary intent clearly appears.

"All petitions, hearings and other proceedings duly brought before, and all prosecutions and legal or other proceedings duly begun by the criminal history systems board or the security and privacy council, or any person holding an office therein, which are pending immediately prior to said effective date shall continue unabated and remain in force notwithstanding the passage of this act, and shall be completed before or by said board or council as so transferred, unless a contrary intent clearly appears.

"Section 14. All orders, rules and regulations duly made by the secretary of administration and finance with reference to the functions of the criminal history systems board and the security and privacy council, which are in force immediately prior to the effective date of this act shall continue in force, and, to the extent that the power to make such orders, rules and regulations is transferred by this act to the secretary of public safety, they shall thereafter be enforced, until superseded, revised, rescinded or canceled in accordance with law, by said secretary unless a contrary intent clearly appears.

"All orders, rules and regulations duly made by the criminal history systems board and security and privacy council, or any person holding an office therein, which are in force immediately prior to said effective date, shall thereafter be enforced, until superseded, revised, rescinded or canceled in accordance with law, by said board or council, as so transferred.

"All questions regarding the identification of such petitions, hearings, prosecutions, proceedings, orders, rules, regulations, licenses, permits, certificates and approvals, and to whom the completion or enforcement thereof is so transferred, shall be determined by the secretary of public safety.

"Section 15. All employees of the criminal history systems board and the security and privacy council who, immediately prior to the effective date of this act, held positions classified under chapter thirty-one of the General Laws or had tenure in their positions by reason of section nine A of chapter thirty of the General Laws shall continue on said board or council without impairment of civil service status, seniority, retirement and other rights of the employees, without interruption of their service within the meaning of said chapter thirty-one or said section nine A of said chapter thirty, and without reduction in their compensation and salary grades. All such employees who, immediately prior to the effective date of this act, are not classified under the provisions of said chapter thirty-one, or are not subject to said section nine A of said chapter thirty, shall continue to serve in their respective offices or positions without impairment of their retirement, seniority or other rights and they shall not be lowered in rank or compensation.

"Nothing in this section shall be construed to confer upon any employee any rights not held immediately prior to the effective date of this act or to prohibit any reduction of salary or grade, transfer, reassignment, suspension, discharge, layoff, or abolition of position not prohibited prior to said effective date."

Cross References

Motor vehicle insurance merit rating board, access to criminal offender record information, see § 183 of this chapter.

1: Copies of record information

Individuals may, when practicable, obtain copies of their criminal offenders record information which contains personal identifiers and such copies may be made by any practicable means. Op.Atty. Gen. April 13, 1976, p. 160.

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§ 169. Repealed by St.1979, c. 702, § 5

St.1979, c. 702, § 5, an emergency act repealing this section, was approved Nov. 9, 1979.

§ 170. Security and privacy council; establishment; members; chairman; terms; clerical assistance; meetings; duties and functions; expenses; reports; participation in interstate system for exchange of record information

There shall be a security and privacy council, hereinafter referred to as the council, consisting of the chairman and one other member of the board, chosen by the board, and seven other members appointed by the governor, to include representatives of the general public, state and local government, and one representative of the criminal justice community. Of the seven members initially appointed by the governor, two shall be appointed for a period of one year, two shall be appointed for a period of two years, two shall be appointed for a period of three years, one shall be appointed for a period of four years. Thereafter, each of the appointments shall be for a period of four years. Each member appointed by the governor shall serve until his successor is appointed and has qualified. The chairman of the council shall be elected by and from within the council to serve for a term of two years. The board shall provide such clerical and other assistance as the council may require. The council shall meet at the call of the governor, its chairman, or any three of its members and shall conduct a continuing study and review and to make recommendations concerning questions of individual privacy and system security in connection with the collection, storage, dissemination, and usage of criminal offender record information. Council members shall receive no compensation for their services on the council but shall receive their expenses necessarily incurred in the performance of official duties.

The council may conduct such inquiries and investigations as it deems necessary and consistent with its authority. The board, each criminal justice agency in the commonwealth, and each state and local agency having authorized access to criminal offender record information, is authorized and may furnish to the council, upon request made by its chairman, such statistical data, reports, and other information directly related to criminal offender record information as is necessary to carry out the council's functions.

The council shall make an annual report to the governor and file a copy thereof with the state secretary and the clerk of the house of representatives and the clerk of the senate. It may make such additional reports and recommendations as it deems appropriate to carry out its duties.

The council shall appoint one or more of its members to serve upon any similar council or committee connected with any interstate system for the exchange of criminal offender record information, and may participate as it deems appropriate in the activities of any such system.

Policies, rules and regulations shall not be adopted by the council until a hearing has been held in the manner provided by section two of chapter thirty A.
Amended by St.1979, c. 702, § 6.

1979 Amendment. St.1979, c. 702, § 6, an emergency act, approved Nov. 9, 1979, in the first paragraph, in the first sentence substituted "referred to as" for "called", "board" for "advisory committee" in two places and deleted "to be" following "other members", and in the fifth sentence, substituted "board" for "advisory committee".

Sections 10 to 15 provided:

"Section 10. All books, papers, records, documents, equipment, lands, interests in land, buildings, facilities, and other property, both personal and real, which immediately prior to the effective date of this act, are in the custody of the secretary of administration and finance or any other agency from which powers and duties are transferred to the executive office of public safety by the provisions of this act, and which relate to or are maintained for the purpose of the exercise of such powers or the performance of such duties, are hereby transferred to the secretary of public safety.

"All questions regarding the identification of such property and to whom custody thereof is so transferred shall be determined by the secretary of public safety.

"Section 11. All monies heretofore appropriated by the criminal history systems board and the security and privacy council or to the secretary of administration and finance on behalf of said board or council from which or from whom powers and du-

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ties are transferred by the provisions of this act which relate to the exercise of such powers or the performance of such duties, and remaining unexpended on the effective date of this act, are hereby transferred to, and shall be available for expenditure by the secretary of public safety.

"All questions regarding the identification of such monies shall be determined by the secretary of public safety.

"Section 12. All duly existing contracts, leases and obligations of the criminal history systems board and the security and privacy council, or of the secretary of administration and finance on behalf of said board or council, from which, or from whom, powers and duties are transferred to the executive office of public safety by this act, which relate to the exercise of such powers or the performance of such duties and which are in force immediately prior to the effective date of this act, shall thereafter be performed by said board and council as so transferred and the secretary of public safety, as the case may be. This section shall not affect any renewal provision or option to renew contained to any such lease in existence on said effective date, all of which may thereafter be exercised by the secretary of public safety.

"All questions regarding the identification of such contracts, leases and obligations and of the agency or executive office to which the performance thereof is transferred shall be determined by the secretary of public safety.

"Section 13. All petitions, hearings and other proceedings duly brought before, and all prosecutions and legal and other proceedings duly begun by, the secretary of administration and finance with reference to the functions of the criminal history systems board or the security and privacy council, which are pending immediately prior to the effective date of this act shall continue unabated and remain in force notwithstanding the passage of this act, and, to the extent that the power to determine or bring such proceedings is transferred by this act to the secretary of public safety, they shall be completed before or by said secretary unless a contrary intent clearly appears.

"All petitions, hearings and other proceedings duly brought before, and all prosecutions and legal or other proceedings duly begun by the criminal history systems board or the security and privacy council, or any person holding an office therein, which are pending immediately prior to said effective date shall continue unabated and remain in force notwithstanding the passage of this act, and shall be completed before or by said board or council as so transferred, unless a contrary intent clearly appears.

"Section 14. All orders, rules and regulations duly made by the secretary of administration and finance with reference to the functions of the criminal history systems board and the security and privacy council, which are in force immediately prior to the effective date of this act shall continue in force, and, to the extent that the power to make such orders, rules and regulations is transferred by this act to the secretary of public safety, they shall thereafter be enforced, until superseded, revised, rescinded or canceled in accordance with law, by said secretary unless a contrary intent clearly appears.

"All orders, rules and regulations duly made by the criminal history systems board and security and privacy council, or any person holding an office therein, which are in force immediately prior to said effective date, shall thereafter be enforced, until superseded, revised, rescinded or canceled in accordance with law, by said board or council, as so transferred.

"All questions regarding the identification of such petitions, hearings, prosecutions, proceedings, orders, rules, regulations, licenses, permits, certificates and approvals, and to whom the completion or enforcement thereof is so transferred, shall be determined by the secretary of public safety.

"Section 15. All employees of the criminal history systems board and the security and privacy council who, immediately prior to the effective date of this act, held positions classified under chapter thirty-one of the General Laws or had tenure in their positions by reason of section nine A of chapter thirty of the General Laws shall continue on said board or council without impairment of civil service status, seniority, retirement and other rights of the employees, without interruption of their service within the meaning of said chapter thirty-one or said section nine A of said chapter thirty, and without reduction in their compensation and salary grades. All such employees who, immediately prior to the effective date of this act, are not classified under the provisions of said chapter thirty-one, or are not subject to said section nine A of said chapter thirty, shall continue to serve in their respective offices or positions without impairment of their retirement, seniority or other rights and they shall not be lowered in rank or compensation.

"Nothing in this section shall be construed to confer upon any employee any rights not held immediately prior to the effective date of this act or to prohibit any reduction of salary or grade, transfer, reassignment, suspension, discharge, layoff, or abolition of position not prohibited prior to said effective date."

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§ 171. Regulations generally; continuing education program; evaluative information

[See main volume for text of first and second paragraphs]

The content and use of evaluative information, and the inspection, receipt of copies and challenge of such information by an individual shall not be governed by the provisions of this act except as provided in this paragraph. Each criminal justice agency holding evaluative information shall, pursuant to section two of chapter thirty A, promulgate regulations to govern the content and use of evaluative information, and to govern, limit or prohibit the inspection, receipt of copies and challenge of such information by an individual referred to therein. The adoption of such regulations by each criminal justice agency shall be subject to the approval of the board, and shall be promulgated within time limits set by the board. If any criminal justice agency holding evaluative information fails to promulgate such regulations, then the board shall promulgate such regulations with respect to that criminal justice agency. Evaluative information shall be subject to the provisions of section one hundred and seventy-two and section one hundred and seventy-eight, as if such information was criminal offender record information.

Amended by St.1977, c. 691, § 3.

1977 Amendment. St.1977, c. 691, § 3, an emergency act, approved Oct. 29, 1977, added the third paragraph.

1. In general

This section, which indicates that purging of criminal records may be required "by the order of any court of competent jurisdiction," is not a grant of power to issue such orders, but merely recognizes court's authority to act to full extent of their previous existing jurisdiction. Police Com'r of Boston v. Municipal Court of Dorchester Dist. (1978) 374 N.E.2d 272, 1978 Mass.Adv.Sh. 685.

Power to order expungement of police records or the equivalent may be exercised if utility of the records for law enforcement purposes is likely to be minimal or nonexistent. Id.

§ 172. Dissemination of record information; certification; eligibility for access; scope of inquiry; listing; access limited; rules; use of information

Except as otherwise provided in sections one hundred and seventy-three to one hundred and seventy-five, inclusive, criminal offender record information, and where present, evaluative information, shall be disseminated, whether directly or through any intermediary, only to (*a*) criminal justice agencies; (*b*) such other agencies and individuals required to have access to such information by statute including United States Armed Forces recruiting offices for the purpose of determining whether a person enlisting has been convicted of a felony as set forth in Title 10, section 504 of the United States Code;[1] and by adding the following sentence:—Notwithstanding the provisions of this section or chapter sixty-six A, the following shall be public records: (1) police daily logs, arrest registers, or other similar records compiled chronologically, provided that no alphabetical arrestee, suspect, or similar index is available to the public, directly or indirectly; (2) chronologically maintained court records of public judicial proceedings, provided that no alphabetical or similar index of criminal defendants is available to the public, directly or indirectly; and (3) published records of public court or administrative proceedings, and of public judicial administrative or legislative proceedings; and (*c*) any other agencies and individuals where it has been determined that the public interest in disseminating such information to these parties clearly outweighs the interest insecurity and privacy. The extent of such access shall be limited to that necessary for the actual performance of the criminal justice duties of criminal justice agencies under clause (*a*); to that necessary for the actual performance of the statutory duties of agencies and individuals granted access under clause (*b*); and to that necessary for the actual performance of the actions or duties sustaining the public interest as to agencies or individuals granted access under clause (*c*).

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The board shall, after consultation with the council, certify those agencies and individuals requesting access to criminal offender record information that qualify for such access under clauses (*a*) or (*b*) of this section, and shall specify for each such agency or individual certified, the extent of its access. The board shall make a finding in writing of eligibility, or noneligibility of each such agency or individual which requests such access. No such information shall be disseminated to any agency or individual prior to the board's determination of eligibility, or, in cases in which the board's decision is appealed, prior to the final judgment of a court of competent jurisdiction that such agency or individual is so eligible.

No agency or individual shall have access to criminal offender record information under clause (*c*), unless a majority of the board, and a majority of the council, each voting as a separate body, determines and certifies that the public interest in disseminating such information to such party clearly outweighs the interest in security and privacy. The extent of access to such information under clause (*c*) shall be determined by majority vote of persons comprising the membership of the board and the council voting as a single group at a duly scheduled board meeting. Certification for access under clause (*c*) may be either access to information relating to a specific identifiable individual, or individuals, on a single occasion; or a general grant of access for a specified period of time not to exceed two years. A general grant of access need not relate to a request for access by the party or parties to be certified. Except as otherwise provided in this paragraph the procedure and requirements for certifying agencies and individuals under clause (*c*) shall be according to the provisions of the preceding paragraphs of this section.

Each agency holding or receiving criminal offender record information shall maintain, for such period as the board shall determine, a listing of the agencies or individuals to which it has released or communicated such information. Such listings, or reasonable samples thereof, may from time to time, be reviewed by the board or the council to determine whether any statutory provisions or regulations have been violated.

Dissemination of criminal offender record information shall, except as provided in this section and for purposes of research programs approved under section one hundred and seventy-four, be permitted only if the inquiry is based upon name, fingerprints, or other personal identifying characteristics. The board shall adopt rules to prevent dissemination of such information where inquiries are based upon categories of offense or data elements other than said characteristics; provided, however, that access by criminal justice agencies to criminal offender record information on the basis of data elements other than personal identifying characteristics, including but not limited to, categories of offense, mode of operation, photographs and physical descriptive data generally, shall be permissible, except as may be limited by the regulations of the board.

Any individual or agency, public or private, that receives or obtains criminal offender record information, in violation of the provisions of this statute, whether directly or through any intermediary, shall not collect, store, disseminate, or use such criminal offender record information in any manner or for any purpose. Notwithstanding the provisions of this section, the dissemination of information relative to a person's conviction of automobile law violations as defined by section one of chapter ninety C, or information relative to a person's charge of operating a motor vehicle while under the influence of intoxicating liquor which resulted in his assignment to a driver alcohol program as described in section twenty-four D of chapter ninety, shall not be prohibited where such dissemination is made, directly or indirectly, by the motor vehicle insurance merit rating board established pursuant to section one hundred and eighty-three of chapter six, to an insurance company doing motor vehicle insurance business within the commonwealth, or to such insurance company's agents, independent contractors or insurance policyholders to be used exclusively for motor vehicle insurance purposes.

Amended by St.1977, c. 365, § 1; St.1977, c. 691, § 4; St.1977, c. 841.

[1] 10 U.S.C.A. § 504.

1977 Amendments. St.1977, c. 365, § 1, an emergency act, approved July 6, 1977, added a paragraph relating to the dissemination of information relative to conviction of automobile law violations.

St.1977, c. 365, §§ 6, 8 to 10, provide:

"Section 6. Any insured whose motor vehicle rates or premiums are affected by this act shall have his present motor vehicle insurance policy amended by endorse-

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ment retroactively as of its effective date to the revised rates and premiums conforming to the requirements of this act, and have it expire on January first, nineteen hundred and seventy-eight. The insurer of any insured whose motor vehicles rates or premiums are affected by this act shall return to said insured the appropriate difference in rates or premiums based on the revised rates and premiums conforming to the requirements of this act, said returns to be made either by payment to said insured or as an identified credit against any unpaid premium balance on said motor vehicle insurance policy issued to said insured. Any insured whose motor vehicle rates or premiums are affected by this act and who purchases a motor vehicle insurance policy in nineteen hundred and seventy-seven after the effective date of this act shall receive a short-term policy expiring on January first, nineteen hundred and seventy-eight, and written at rates and premiums conforming to the requirements of the act. Nothing in this section shall prohibit an insurer from offering to any insured a motor vehicle insurance policy for a period of one year or from offering an extension of any motor vehicle insurance policy issued in nineteen hundred and seventy-seven.

"Any premium loss suffered by an insurer as a result of its compliance with the provisions of this act shall not be used as a factor in calculating future motor vehicle insurance rates for said insurer. The commissioner is hereby authorized to declare any motor vehicle insurance rate for which such has been considered as a factor as invalid and is hereby directed to take all steps necessary to correct said rate for the benefit of the insured affected by said rate.

"Section 8. The rights and remedies provided in this act shall be the sole and exclusive remedies available to be exercised by both insurers and insureds for nineteen hundred and seventy-seven motor vehicle insurance rate relief.

"Section 9. This act shall take effect upon its passage, except that the plan referred to in section three shall not become operative until January first, nineteen hundred and seventy-eight.

"Section 10. The provisions of this act are hereby declared to be severable and if any such provisions or the application of such provisions to any person or circumstances shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not be construed to affect the validity or constitutionality of any of the remaining provisions of this act or the application of such provisions to persons or circumstances other than those as to which it is held invalid."

St.1977, c. 691, § 4, an emergency act, approved Oct. 29, 1977, amended the first sentence of the first paragraph by inserting "Except as otherwise provided in sections one hundred and seventy-three to one hundred and seventy-five, inclusive," at the beginning, by inserting "and where present, evaluative information,", by substituting clause (b) for former clause (b) which read "such other individuals and agencies as are authorized assess to such records by statute" and by adding clause (c); added, to the first paragraph, the second sentence; rewrote the first and second sentences of the second paragraph; inserted the third paragraph; amended the fourth paragraph by substituting "the board shall determine" for "is found by the board to be appropriate" following "for such period as" in the first sentence, and by deleting "advisory committee," following "reviewed by the board" from the second sentence; amended the fifth paragraph by substituting "of criminal offender record information shall, except as provided in this section and" for "from any agency in this commonwealth of criminal offender record information shall, except" following "Dissemination" and by substituting "seventy-four" for "seventy-three" following "section one hundred and" in the first sentence, and by substituting "adopt rules" for "promulgate regulations" following "The board shall" and "where inquiries are based upon * * * regulations of the board" for "except in the above situations, where inquiries are based upon categories of offense or data elements othdr than said characteritics" following "prevent dissemination of such information" in the second sentence; and substituted the sixth paragraph for former fifth paragraph.

St.1977, c. 841, an emergency act, approved Dec. 23, 1977, added, to clause (b), that which begins "including United States Armed Forces" and added the provision which defines "public records".

Cross References

Motor vehicle insurance merit rating board, access to criminal offender record information, see § 183 of this chapter.

Library References

Criminal Law ⇐1222.
C.J.S. Criminal Law § 2008 et seq.

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1. In general

Records of firearms discharge reports kept by city police department were not subject to blanket exemption from disclosure under c. 4, § 7 providing for disclosure of public records generally, because they may have contained criminal offender record information. Reinstein v. Police Commissioner of Boston (1979) 391 N.E.2d 881, 1979 Mass.Adv.Sh. 1509.

This section providing that alphabetical index of criminal records may not be made available to the public did not violate constitutional guarantee of freedom of the press. New Bedford Standard-Times Pub. Co. v. Clerk of Third Dist. Court of Bristol (1979) 387 N.E.2d 110, 1979 Mass.Adv.Sh. 515.

This section providing that alphabetical index of criminal records may not be made available to the public did not unconstitutionally interfere with internal functioning of judicial branch and did not violate Const.Pt. 1, Art. 30 requiring separation of powers, in view of lack of showing that denial of public access to such records impaired ability of court to function and in view of fact that Criminal Offender Record Information Act served useful rehabilitative purpose. Id.

Newspaper could not complain that provisions of Criminal Offender Records Information Act other than those mandating nondisclosure to public of alphabetical index of criminal records impermissibly interfered with internal functioning of court and thereby violated Const.Pt. 1, Art. 30, requiring separation of powers, as any interference with court's internal functioning did not violate rights of newspaper. Id.

Section 167 of this chapter, which restricts dissemination of records and data compiled by criminal justice agencies, and this section, which sets forth procedure for dissemination of such information, did not bar Insurance Commissioner from asking defendant insurance agent about his criminal history in application form for renewal of defendant's insurance broker's license; in any event, nothing in said sections justified defendant in responding falsely to such an inquiry. Com. v. McDuffee (1979) 386 N.E.2d 754, 1979 Mass.App.Adv.Sh. 288.

Sealed record statute (c. 276, § 100A) does not operate to erase fact of prior conviction, as does § 167 et seq. of this chapter providing for purging or expungement of criminal offender information, but seeks simply to insure confidentiality; there is nothing in sealed record statute to suggest that once fact of conviction is sealed, it becomes nonexistent, and hence untrue for purposes of common law of defamation. Rzeznik v. Chief of Police of Southampton (1978) 373 N.E.2d 1128, 1978 Mass.Adv.Sh. 461.

Language in sealed records statute (c. 276, § 100A), providing that Commissioner of Probation, "in response to inquiries by authorized persons other than any law enforcement agency, any court, or any appointing authority, shall in the case of a sealed record * * * report that no record exists," must be read to imply that law enforcement agencies, courts, and appointing authorities do have access to criminal records which have been sealed. Id.

St.1977, c. 365, requiring that motor vehicle insurance carriers in Massachusetts rewrite certain automobile insurance contracts issued in 1977 retroactive to January 1, 1977, at reduced rates, and providing for rebates, is "reasonable" and constitutional, since Legislature could rationally have concluded that the competitive rate system under statute had failed and had resulted in serious financial difficulties for many policyholders. American Mfrs. Mut. Ins. Co. v. Commissioner of Ins. (1978) 372 N.E.2d 530, 1978 Mass.Adv.Sh. 58.

St.1977, c. 365, requiring motor vehicle insurance carriers in Massachusetts to rewrite certain automobile insurance contracts issued in 1977 retroactive to January 1, 1977, at reduced rates, and providing for rebates, is not invalid on asserted ground that particular rebate concerning two communities provided special discriminatory relief, since there were known circumstances from which Legislature could have concluded that policyholders in two communities in question were especially hard hit by extreme increases in premiums charged and Legislature could have rationally determined that special relief was in order. Id.

St.1977, c. 365 requiring that motor vehicle insurance carriers in Massachusetts rewrite certain automobile insurance contracts issued in 1977 retroactive to January 1, 1977, at reduced rates, and providing for rebates, is remedial rather than permissive, and is within power of Legislature as limited by Federal and State Constitutions. Id.

Under this section police officials are entitled to obtain criminal record information only to the extent that such information is needed for performance of their duties. Op.Atty.Gen., July 19, 1978, p. —.

Criminal offender record information system act, c. 6, § 167 et seq., prohibits public dissemination of criminal offender record information which would include summaries of criminal arrest information relating to individuals prepared by police

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departments, district attorneys' offices, probation departments, and similar agencies, but the act would not restrain court clerks from disseminating any other kind of information. Op.Atty.Gen. Nov. 20, 1973, p. 89.

Registry of motor vehicles is prohibited by this section in conjunction with c. 4, § 7 and c. 66, § 10 from disseminating in any manner criminal offender record information to parties not certified by the criminal history systems board. Op.Atty.Gen. Oct. 29, 1974, p. 71.

2. Firearm applications

Sealed records statute (c. 276, § 100A) does not operate to preclude use of criminal offender information by gun licensing authorities. Rzeznik v. Chief of Police of Southampton (1978) 373 N.E.2d 1128, 1978 Mass.Adv.Sh. 461.

Under sealed records statute (c. 276, § 100A) city chief of police, as member of law enforcement agency, and as part of "criminal justice agency," was authorized access to sealed felony records of gun license applicant and, by implication, use of such information in determining applicant's eligibility for gun license. Id.

The commissioner of probation must inform a police chief who requests information about the criminal record of an individual who has applied for license to sell or carry firearms or ammunition, whether the applicant has a felony conviction or a misdemeanor conviction for the unlawful use, possession or sale of narcotic or harmful drugs. Op.Atty.Gen., July 19, 1978, p. —.

Under c. 276, § 100A, which provides for sealing certain criminal records, the commissioner of probation is required to provide an inquiring police chief with relevant substantive information about a gun license applicant's criminal record. Id.

Application for license to carry firearms and application for firearm identification card are public records except to the extent that application forms require information as to criminal history of applicant which would be exempted from disclosure by c. 4, § 7 and by this section. Op.Atty.Gen. November 10, 1975, p. 127.

3. Discovery in criminal proceedings

Prosecutor was not obligated to obtain prison records of murder victim and prosecution witness for purpose of turning them over to defendants, who were charged with victim's murder. Com. v. Campbell (1979) 393 N.E.2d 830, 1979 Mass.Adv.Sh. 2055.

§ 175. Inspection of record information by individual concerned; corrections; procedure; restrictions

1. In general

Individuals may, when practicable, obtain copies of their criminal offenders record information which contains personal identifiers and such copies may be made by any practicable means. Op.Atty.Gen. April 13, 1976, p. 160.

§ 177. Violations; civil liability

Cross References

Injunctions, see Mass.R.Civ.P. Rule 65.

§ 178. Violations; punishment

Any person who willfully requests, obtains or seeks to obtain criminal offender record information under false pretenses, or who willfully communicates or seeks to communicate criminal offender record information to any agency or person except in accordance with the provisions of sections one hundred and sixty-eight to one hundred and seventy-five, inclusive, or any member, officer, employee or agency of the board, the council or any participating agency, or any person connected with any authorized research program, who willfully falsifies criminal offender record information, or any records relating thereto, shall for each offense be fined not more than five thousand dollars, or imprisoned in a jail or house of correction for not more than one year, or both.

Amended by St.1979, c. 702, § 7.

1979 Amendment. St.1979, c. 702, § 7, an emergency act, approved Nov. 9, 1979, deleted ", the advisory committee" following "the board".

Sections 10 to 15 provided:

"Section 10. All books, papers, records, documents, equipment, lands, interests in land, buildings, facilities, and other proper-

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ty, both personal and real, which immediately prior to the effective date of this act, are in the custody of the secretary of administration and finance or any other agency from which powers and duties are transferred to the executive office of public safety by the provisions of this act, and which relate to or are maintained for the purpose of the exercise of such powers or the performance of such duties, are hereby transferred to the secretary of public safety.

"All questions regarding the identification of such property and to whom custody thereof is so transferred shall be determined by the secretary of public safety.

"Section 11. All monies heretofore appropriated by the criminal history systems board and the security and privacy council or to the secretary of administration and finance on behalf of said board or council from which or from whom powers and duties are transferred by the provisions of this act which relate to the exercise of such powers or the performance of such duties, and remaining unexpended on the effective date of this act, are hereby transferred to, and shall be available for expenditure by the secretary of public safety.

"All questions regarding the identification of such monies shall be determined by the secretary of public safety.

"Section 12. All duly existing contracts, leases and obligations of the criminal history systems board and the security and privacy council, or of the secretary of administration and finance on behalf of said board or council, from which, or from whom, powers and duties are transferred to the executive office of public safety by this act, which relate to the exercise of such powers or the performance of such duties, and which are in force immediately prior to the effective date of this act, shall thereafter be performed by said board and council as so transferred and the secretary of public safety, as the case may be. This section shall not affect any renewal provision or option to renew contained to any such lease in existence on said effective date, all of which may thereafter be exercised by the secretary of public safety.

"All questions regarding the identification of such contracts, leases and obligations and of the agency or executive office to which the performance thereof is so transferred shall be determined by the secretary of public safety.

"Section 13. All petitions, hearings and other proceedings duly brought before, and all prosecutions and legal and other proceedings duly begun by, the secretary of administration and finance with reference to the functions of the criminal history systems board or the security and privacy council, which are pending immediately prior to the effective date of this act shall continue unabated and remain in force notwithstanding the passage of this act, and, to the extent that the power to determine or bring such proceedings is transferred by this act to the secretary of public safety, they shall be completed before or by said secretary unless a contrary intent clearly appears.

"All petitions, hearings and other proceedings duly brought before, and all prosecutions and legal or other proceedings duly begun by the criminal history systems board or the security and privacy council, or any person holding an office therein, which are pending immediately prior to said effective date shall continue unabated and remain in force notwithstanding the passage of this act, and shall be completed before or by said board or council as, so transferred, unless a contrary intent clearly appears.

"Section 14. All orders, rules and regulations duly made by the secretary of administration and finance with reference to the functions of the criminal history systems board and the security and privacy council, which are in force immediately prior to the effective date of this act shall continue in force, and, to the extent that the power to make such orders, rules and regulations is transferred by this act to the secretary of public safety, they shall thereafter be enforce, until superseded, revised, rescinded or canceled in accordance with law, by said secretary unless a contrary intent clearly appears.

"All orders, rules and regulations duly made by the criminal history systems board and security and privacy council, or any person holding an office therein, which are in force immediately prior to said effective date, shall thereafter be enforced, until superseded, revised, rescinded or canceled in accordance with law, by said board or council, as so transferred.

"All questions regarding the identification of such petitions, hearings, prosecutions, proceedings, orders, rules, regulations, licenses, permits, certificates and approvals, and to whom the completion or enforcement thereof is so transferred, shall be determined by the secretary of public safety.

"Section 15. All employees of the criminal history systems board and the security and privacy council who, immediately prior to the effective date of this act, held positions classified under chapter thirty-one of the General Laws or had tenure in their

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positions by reason of section nine A of chapter thirty of the General Laws shall continue on said board or council without impairment of civil service status, seniority, retirement and other rights of the employees, without interruption of their service within the meaning of said chapter thirty-one or said section nine A of said chapter thirty, and without reduction in their compensation and salary grades. All such employees who, immediately prior to the effective date of this act, are not classified under the provisions of said chapter thirty-one, or are not subject to said section nine A of said chapter thirty, shall continue to serve in their respective offices or positions without impairment of their retirement, seniority or other rights and they shall not be lowered in rank or compensation.

"Nothing in this section shall be construed to confer upon any employee any rights not held immediately prior to the effective date of this act or to prohibit any reduction of salary or grade, transfer, reassignment, suspension, discharge, layoff, or abolition of position not prohibited prior to said effective date."

* * * * *

CHAPTER 66A. FAIR INFORMATION PRACTICES [NEW]

Sec.
1. Definitions.
2. Holders maintaining personal data system; duties.
3. Rules and regulations.

Chapter 66A of the General Laws, consisting of sections 1 to 3, was added by St.1975, c. 776, § 1, approved December 17, 1975, and by section 5 made effective July 1, 1976.

Section 5 of St.1975, c. 776, was amended by St.1976, c. 249, § 3, an emergency act, approved July 16, 1976, to read: "This act shall take effect on July first, nineteen hundred and seventy-six; provided, however, that for nonemployee records maintained by any criminal justice agency this act shall take effect on July first, nineteen hundred and seventy-seven."

Cross References

Automated or manual personal data systems, filing notice of specifications, see c. 30, § 63.

Civil remedies for violations of chapter, see c. 214, § 3B.

Rehabilitation commission, confidentiality of records or information, see c. 6, § 84.

Library References

Records ⇐13, 14.
C.J.S. Records §§ 34, 35 et seq., 40.

§ 1. Definitions

As used in this chapter, the following words shall have the following meanings unless the context clearly indicates otherwise:—

"Agency", any agency of the executive branch of the government, including but not limited to any constitutional or other office, executive office, department, division, bureau, board, commission or committee thereof; or any authority created by the general court to serve a public purpose, having either statewide or local jurisdiction.

"Automated personal data system", a personal data system in which personal data is stored in whole or in part, in a computer or in electronically controlled or accessible files.

"Computer accessible", recorded on magnetic tape, magnetic film, magnetic disc, magnetic drum, punched card, or optically scannable paper or film.

"Criminal justice agency", an agency at any level of government which performs as its principal function activity relating to (*a*) the apprehension, prosecution, defense, adjudication, incarceration, or rehabilitation of criminal offenders; or (*b*) the collection, storage, dissemination, or usage of criminal offender record information.

"Data subject", an individual to whom personal data refers. This term shall not include corporations, corporate trusts, partnerships, limited partnerships, trusts or other similar entities.

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"Holder", an agency which collects, uses, maintains or disseminates personal data or any person or entity which contracts or has an arrangement with an agency whereby it holds personal data as part or as a result of performing a governmental or public function or purpose. A holder which is not an agency is a holder, and subject to the provisions of this chapter, only with respect to personal data so held under contract or arrangement with an agency.

"Manual personal data system", a personal data system which is not an automated or other electronically accessible or controlled personal data system.

"Personal data", any information concerning an individual which, because of name, identifying number, mark or description can be readily associated with a particular individual; provided, however, that such information is not contained in a public record, as defined in clause Twenty-sixth of section seven of chapter four and shall not include intelligence information, evaluative information or criminal offender record information as defined in section one hundred and sixty-seven of chapter six.

"Personal data system", a system of records containing personal data, which system is organized such that the data are retrievable by use of the identity of the data subject.

Added by St.1975, c. 776, § 1. Amended by St.1976, c. 249, § 1; St.1977, c. 691, § 6.

1975 Enactment. St.1975, c. 776, § 1, adding this chapter, consisting of this section and sections 2 and 3, was approved Dec. 17, 1975, and by section 5 made effective July 1, 1976.

Section 5 of St.1975, c. 776, was amended by St.1976, c. 249, § 3, an emergency act, approved July 16, 1976, to read: "This act shall take effect on July first, nineteen hundred and seventy-six; provided, however, that for nonemployee records maintained by any criminal justice agency this act shall take effect on July first, nineteen hundred and seventy-seven."

Section 4 of St.1975, c. 776, provided: "The provisions of this act are severable and if any such provision or the application of such provision to any person or circumstances shall be held to be invalid or unconstitutional such invalidity or unconstitutionality shall not affect the validity or constitutionality of any of the remaining provisions of this act or the application of such provision to said person or circumstances."

1976 Amendment. St.1976, c. 249, § 1, an emergency act, approved July 16, 1976, inserted the definition of "Criminal justice agency".

1977 Amendment. St.1977, c. 691, § 6, an emergency act, approved Oct. 29, 1977, rewrote the definition of "Agency" which read "the commonwealth or any of its departments, authorities established by the general court to serve a public purpose having either state-wide or local jurisdiction, boards and commissions or other public or quasi-public entities"; deleted from the definition of "Criminal justice agency", "a court with criminal jurisdiction or a juvenile court;" preceding "an agency at any level"; amended definition of "Data subject" by substituting "to whom personal data refers" for "whose name or identity is added to or maintained in a personal data system", and by adding the second sentence; rewrote the definition of "Holder" which formerly read "an agency which maintains personal data or any facility which contracts with such agency to hold personal data"; added, to the definition of "Personal data", the proviso; and rewrote the definition of "Personal data system" which formerly read "a collection of records containing personal data except criminal offender record information as defined in section one hundred as sixty-seven of chapter six".

Law Review Commentaries

Electronic data processing in private hospitals: Patient privacy confidentiality and control. (1979) 13 Suffolk U.L.Rev. 1386.

Library References

Records ⇐14.

C.J.S. Records § 35 et seq.

1. In general

Information compiled by boards of registration in connection with licensing and certification is personal data, and disclosure of such information is restricted by § 2 of this chapter. Op.Atty.Gen., May 18, 1977, p. 157.

§ 2. Holders maintaining personal data system; duties

Every holder maintaining personal data shall:—

(a) identify one individual immediately responsible for the personal data system who shall insure that the requirements of this chapter for preventing access to or dissemination of personal data are followed;

(b) inform each of its employees having any responsibility or function in the design, development, operation, or maintenance of the personal data system, or the use of any personal data contained therein, of each safeguard required by this chapter, of each rule and regulation promulgated pursuant to section three which pertains to the operation of the personal data system, and of the civil remedies described in section three B of chapter two hundred and fourteen available to individuals whose rights under chapter sixty-six A are allegedly violated;

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(c) not allow any other agency or individual not employed by the holder to have access to personal data unless such access is authorized by statute or regulations which are consistent with the purposes of this chapter or is approved by the data subject whose personal data are sought if the data subject is entitled to access under clause (i). Medical or psychiatric data may be made available to a physician treating a data subject upon the request of said physician, if a medical or psychiatric emergency arises which precludes the data subject's giving approval for the release of such data, but the data subject shall be given notice of such access upon termination of the emergency. A holder shall provide lists of names and addresses of applicants for professional licenses and lists of professional licensees to associations or educational organizations recognized by the appropriate professional licensing or examination board. A holder shall comply with a data subject's request to disseminate his data to a third person if practicable and upon payment, if necessary, of a reasonable fee;

(d) take reasonable precautions to protect personal data from dangers of fire, theft, flood, natural disaster, or other physical threat;

(e) comply with the notice requirements set forth in section sixty-three of chapter thirty;

(f) in the case of data held in automated personal data systems, and to the extent feasible with data held in manual personal data systems, maintain a complete and accurate record of every access to and every use of any personal data by persons or organizations outside of or other than the holder of the data, including the identity of all such persons and organizations which have gained access to the personal data and their intended use of such data and the holder need not record any such access of its employees acting within their official duties;

(g) to the extent that such material is maintained pursuant to this section, make available to a data subject upon his request in a form comprehensible to him, a list of the uses made of his personal data, including the identity of all persons and organizations which have gained access to the data;

(h) maintain personal data with such accuracy, completeness, timeliness, pertinance and relevance as is necessary to assure fair determination of a data subject's qualifications, character, rights, opportunities, or benefits when such determinations are based upon such data;

(i) inform in writing an individual, upon his request, whether he is a data subject, and if so, make such data fully available to him or his authorized representative, upon his request, in a form comprehensible to him, unless doing so is prohibited by this clause or any other statute. A holder may withhold from a data subject for the period hereinafter set forth, information which is currently the subject of an investigation and the disclosure of which would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest, but this sentence is not intended in any way to derogate from any right or power of access the data subject might have under administrative or judicial discovery procedures. Such information may be withheld for the time it takes for the holder to complete its investigation and commence an administrative or judicial proceeding on its basis, or one year from the commencement of the investigation or whichever occurs first. In making any disclosure of information to a data subject pursuant to this chapter the holder may remove personal identifiers relating to a third person, except where such third person is an officer or employee of government acting as such and the data subject is not. No holder shall rely on any exception contained in clause Twenty-sixth of section seven of chapter four to withhold from any data subject personal data otherwise accessible to him under this chapter.

(j) establish procedures that (1) allow each data subject or his duly authorized representative to contest the accuracy, completeness, pertinence, timeliness, relevance or dissemination of his personal data or the denial of access to such data maintained in the personal data system and (2) permit personal data to be corrected

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or amended when the data subject or his duly authorized representative so requests and there is no disagreement concerning the change to be made or, when there is disagreement with the data subject as to whether a change should be made, assure that the data subject's claim is noted and included as part of the data subject's personal data and included in any subsequent disclosure or dissemination of the disputed data;

(k) maintain procedures to ensure that no personal data are made available in response to a demand for data made by means of compulsory legal process, unless the data subject has been notified of such demand in reasonable time that he may seek to have the process quashed;

(l) not collect or maintain more personal data than are reasonably necessary for the performance of the holder's statutory functions.

Added by St.1975, c. 776, § 1. Amended by St.1976, c. 249, § 2; St.1977, c. 691, §§ 7 to 12.

1976 Amendment. St.1976, c. 249, § 2, an emergency act, approved July 16, 1976, inserted another clause (j) which was deleted in 1977 and related to providing of lists of names and addresses of professional license applicants and lists of professional licenses to associations or educational organizations.

1977 Amendments. St.1977, c. 691, § 7, an emergency act, approved Oct. 29, 1977, substituted, in the introductory paragraph, "holder maintaining personal data" for "agency maintaining a personal data system".

Section 8 rewrote clause (c) which formerly read: "(c) not allow any other agency or individual not employed by the holding agency to have access to personal data unless such access is authorized by statute or regulation, or is approved by the holding agency and by the data subject whose personal data is sought. Medical or psychiatric data may be made available to a physician treating a data subject, upon the request of said physician, if a medical or psychiatric emergency arises which precludes the data subject's giving approval for the release of such data; provided, however, that the data subject shall be given notice of such access upon termination of the emergency."

Section 9 amended clause (f) by substituting "data held in automated personal data systems, and to the extent feasible with data held in manual personal data systems," for "automated personal data systems, and to the maximum extent feasible with manual personal data systems," following "in the case of", by substituting "by persons or organizations outside of or other than the holder of the data," for "in any personal data system" following "use of any personal data", by substituting "which" for "who" following "persons and organizations", and by adding "and the holder need not record any such access of its employees acting within their official duties".

Section 10 amended clause (i) by deleting "in the personal data system" following "is a data subject", by inserting "or his authorized representative" following "available to him" and "this clause or any other" following "is prohibited by"; and by adding the second through the fifth sentences.

Section 11 deleted clause (j) added by St.1976, c. 249, § 2, which read:

"(j) provide lists of names and addresses of applicants for professional licenses and lists of professional licensees to associations or educational organizations recognized by the appropriate professional licensing or examination board;".

Section 12 deleted from clause (k) "from its personal data systems" following "are made available"; and added clause (l).

Law Review Commentaries

Electronic data processing in private hospitals: Patient privacy confidentiality and control. (1979) 13 Suffolk U.L.Rev. 1286.

Privacy: A general introduction. Jonathan Brant (1976) 61 Mass.L.Q. 10.

1. In general

Complaint filed by insurance broker sufficiently alleged cause of action against Department of Banking and Insurance and Commissioner of Insurance to recover for alleged violations of Fair Information Practices Act (§ 1 et seq. of this chapter). Swartz v. Department of Banking and Ins. (1978) 382 N.E.2d 1050, 1978 Mass.Adv.Sh. 2317.

Insurance broker who was an individual proprietor had right to sue under the Fair Information Practices Act (§ 1 et seq. of this chapter) to recover for alleged violations of the Act. Id.

Disclosure of personal information which encompasses an employee's name, home address and family situation is information in which the employee has a legitimate privacy interest. Op.Atty.Gen., Oct. 14, 1977, p. 88.

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When personal data is not a public record this chapter controls and no access may be granted without the consent of the individual and the agency in possession of the document, unless authorized by statute or regulation. Id.

Information compiled by boards of registration in connection with licensing and certification is personal data, and disclosure of such information is restricted by this section. Op.Atty.Gen., May 18, 1977, p. 157.

Boards of registration are subject to § 1 et seq. of this chapter. Id.

Where a specific statute requires a board of registration to make names, addresses or other personal data available for public inspection, access to such information is authorized and permitted by this section. Id.

§ 3. Rules and regulations

The secretary of each executive office shall promulgate rules and regulations to carry out the purposes of this chapter which shall be applicable to all agencies, departments, boards, commissions, authorities, and instrumentalities within each of said executive offices subject to the approval of the commissioner of administration. The department of community affairs shall promulgate rules and regulations to carry out the purposes of this chapter which shall be applicable to local housing and redevelopment authorities of the cities and towns. Any agency not within any such executive office shall be subject to the regulations of the commissioner of administration. The attorney general, the state secretary, the state treasurer and the state auditor shall adopt applicable regulations for their respective departments.
Added by St.1975, c. 776, § 1. Amended by St.1977, c. 691, § 13.

1977 Amendment. St.1977, c. 691, § 13, an emergency act, approved Oct. 29, 1977, added the third and fourth sentences.

Law Review Commentaries

Electronic data processing in private hospitals: Patient privacy confidentiality and control. (1979) 13 Suffolk U.L.Rev. 1386.

Privacy: A general introduction. Jonathan Brant (1976) 61 Mass.L.Q. 10.

* * * * *

§ 34. Unlawful possession; particular controlled substances, including heroin and marihuana; prior convictions; criminal penalties; continuance; probation; dismissal; sealing of records

No person knowingly or intentionally shall possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the provisions of this chapter. Except as hereinafter provided, any person who violates this section shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars, or by both such fine and imprisonment. Any person who violates this section by possessing heroin shall for the first offense be punished by imprisonment in a house of correction for not more than two years or by a fine of not more than two thousand dollars, or both, and for a second or subsequent offense shall be punished by imprisonment in the state prison for not less than two and one-half years nor more than five years or by a fine of not more than five thousand dollars and imprisonment in a jail or house of correction for not more than two and one-half years. Any person who violates this section by possession of marihuana or a controlled substance in Class E of section thirty-one shall be punished by imprisonment in a house of correction for not more than six months or a fine of five hundred dollars, or both. Except for an offense involving a controlled substance in Class E of section thirty-one, whoever violates the provisions of this section after one or more convictions of a violation of this section or of a felony under any other provisions of this chapter, or of a corresponding provision of earlier law relating to the sale or manufacture of a narcotic drug as defined in said earlier law, shall be punished by imprisonment in a house of correction for not more than two years or by a fine of not more than two thousand dollars, or both.

If any person who is charged with a violation of this section has not previously been convicted of a violation of any provision of this chapter or other provision of prior law relative to narcotic drugs or harmful drugs as defined in said prior law, or

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of a felony under the laws of any state or of the United States relating to such drugs, has had his case continued without a finding to a certain date, or has been convicted and placed on probation, and if, during the period of said continuance or of said probation, such person does not violate any of the conditions of said continuance or said probation, then upon the expiration of such period the court may dismiss the proceedings against him, and may order sealed all official records relating to his arrest, indictment, conviction, probation, continuance or discharge pursuant to this section; provided, however, that departmental records which are not public records, maintained by police and other law enforcement agencies, shall not be sealed; and provided further, that such a record shall be maintained in a separate file by the department of probation solely for the purpose of use by the courts in determining whether or not in subsequent proceedings such person qualifies under this section. The record maintained by the department of probation shall contain only identifying information concerning the person and a statement that he has had his record sealed pursuant to the provisions of this section. Any conviction, the record of which has been sealed under this section, shall not be deemed a conviction for purposes of any disqualification or for any other purpose. No person as to whom such sealing has been ordered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, indictment, conviction, dismissal, continuance, sealing, or any other related proceeding, in response to any inquiry made of him for any purpose.

Notwithstanding any other penalty provision of this section, any person who is convicted for the first time under this section for the possession of marihuana or a controlled substance in Class E and who has not previously been convicted of any offense pursuant to the provisions of this chapter, or any provision of prior law relating to narcotic drugs or harmful drugs as defined in said prior law shall be placed on probation unless such person does not consent thereto, or unless the court files a written memorandum stating the reasons for not so doing. Upon successful completion of said probation, the case shall be dismissed and records shall be sealed.

Amended by St.1972, c. 806, §§ 23, 24; St.1974, c. 207; St.1974, c. 440; St.1975, c. 369.

1971 Enactment. This section was derived from c. 94, former §§ 187B, 198, 199F, 205, 212, 212A, 217B.

1972 Amendment. St.1972, c. 806, § 23, in the second paragraph, substituted "paragraph two of section one hundred A of chapter two hundred and seventy-six" for "law" in the first sentence, and provided for "sealing" instead of "expungement" of records where appearing throughout.

Section 24 substituted "sealed" for "expunged" in the second sentence of the third paragraph.

St.1972, c. 806, was approved July 19, 1972. Emergency declaration by the Governor was filed July 20, 1972.

1974 Amendments. St.1974, c. 207, approved May 9, 1974, in the first sentence of the second paragraph, deleted "in the manner provided by paragraph two of section one hundred A of chapter two hundred and seventy-six" preceding the words "dismiss the proceedings".

St.1974, c. 440, approved June 28, 1974, inserted "for the first offense", and added the penalty provisions "for a second or subsequent offense", in the third sentence of the first paragraph.

1975 Amendment. St.1975, c. 369, approved June 21, 1975, inserted "or a controlled substance in Class E" in the first sentence of the third paragraph.

1973 Related Laws. For provisions of St. 1973, c. 1102, §§ 1 to 3, relating to the sealing of records of first conviction for possession of marihuana under this chapter, see the amendatory note under c. 276, § 100A.

Cross References

Allegations, bill of particulars, presumption and burden of proof in prosecutions involving controlled substances, see c. 277, § 38.

Discrimination in employment for failure to disclose certain arrests prohibited, applicability of this section to expungement of records, see c. 151B, § 4, subsec. 9.

Operation of motor vehicle while under influence of narcotic drugs, etc. as defined by section 1 of this chapter, punishment, see c. 90, § 24(1)(a).

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	4.461, 462			X
2. Privacy and Security Council				
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	4.462			X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	4.1801(3)			X
3.12 Authorizes to Private Sector	4.1801(3)			X
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	4.462			X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	4.1801(3)			X
3.22 Authorizes to Private Sector	4.1801(3)			X
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	4.462			X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	4.1801(3)			X
3.32 Authorizes to Private Sector	4.1801(3)			X
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	4.1801(3)			X
5. Right to Challenge				
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information	4.463			X
8. Purging Conviction Information				

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information	14.15 (7411)			X
11. Removal of Disqualifications	14.15 (7411)			X
12. Right to State Non-Existence of Record				
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	4.463			X
14.2 Auditing Requirements				
14.3 Other Accuracy/Completeness Requirements				
15. Dedication				
16. Civil Remedies	4.446			X
17. Criminal Penalties	28.760 4.446			X X
18. Public Records	28.760 4.1801			X X
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security				
22.1 Physical (Building) Security				
22.2 Administrative Security				
22.3 Computer Security				
23. Transaction Logs				
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)	4.1801			X
27. FOIA (Excluding CJI)				
28. Central State Repository	4.461, 462			X

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Michigan Statutes Annotated

FREEDOM OF INFORMATION ACT

Act 442, 1976, p —; eff April 13, 1977.

AN ACT to provide for public access to certain public records of public bodies; to permit certain fees; to prescribe the powers and duties of certain public officers and public bodies; to provide remedies and penalties; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

§ 4.1801(1) Short title.] SEC. 1. (1) This act shall be known and may be cited as the "freedom of information act".

Public policy.] (2) It is the public policy of this state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process. (MCL §15.231.)

Former act. Chapter 2 of the Administrative Procedures Act of 1969, which was former §§3.560(121)–3.560(123), dealt with publication, inspection, and copying of materials.

§ 4.1801(2) Definitions.] SEC. 2. As used in this act:

(a) "Person" means an individual, corporation, partnership, firm, organization, or association.

(b) "Public body" means:

(i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government, but does not include the governor or lieutenant governor, the executive office of the governor or lieutenant governor, or employees thereof.

(ii) An agency, board, commission, or council in the legislative branch of the state government.

(iii) A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof.

(iv) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority.

(v) The judiciary, including the office of the county clerk and employees thereof when acting in the capacity of clerk to the circuit court, is not included in the definition of public body.

(c) "Public record" means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. This act separates public records into 2 classes: (i) those which are exempt from disclosure under section 13, and (ii) all others, which shall be subject to disclosure under this act.

(d) "Unusual circumstances" means any 1 or a combination of the following, but only to the extent necessary for the proper processing of a request:

(i) The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request.

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(ii) The need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.

(e) "Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content. (MCL §15.232.)

§ 4.1801(3) Public record; request, inspection, copy, receipt of copy; subscription, six months validity; renewal.] SEC. 3. (1) Upon an oral or written request which describes the public record sufficiently to enable the public body to find the public record, a person has a right to inspect, copy, or receive copies of a public record of a public body, except as otherwise expressly provided by section 13. A person has a right to subscribe to future issuances of public records which are created, issued, or disseminated on a regular basis. A subscription shall be valid for up to 6 months, at the request of the subscriber, and shall be renewable.

Public body; functions and duties; rules.] (2) A public body shall furnish a requesting person a reasonable opportunity for inspection and examination of its public records, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during the usual business hours. A public body may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions.

Same; same; exceptions.] (3) This act does not require a public body to make a compilation, summary, or report of information, except as required in section 11.

This act does not require a public body to create a new public record, except as required in sections 5 and 11, and to the extent required by this act for the furnishing of copies, or edited copies pursuant to section 14(1), of an already existing public record.

Public record; certified copy.] (5) The custodian of a public record shall, upon request, furnish a requesting person a certified copy of a public record. (MCL §15.233.)

Former act. Former §3.560(121) required an agency to publish and make available for public inspection and copying during its business hours, or on subscription on request of any person, final orders or decisions in contested cases and the records on which they were made, promulgated rules, and other written statements implementing or interpreting law, rules or policy, including, but not limited to, guidelines, manuals and forms with instructions, adopted or used by the agency in the discharge of its functions. To the extent required to prevent an unwarranted invasion of personal privacy, the agency could delete identifying details when it published or made available a matter required to be published and made available for public inspection. The publications could be in pamphlet, loose-leaf or other appropriate form in printed, mimeographed, or other written manner.

§ 4.1801(4) Fees; actual costs; waiver or reduction of fee; affidavits, public assistance recipient, indigency.] SEC. 4. (1) A public body may charge a fee for providing a copy of a public record. Subject to subsection (3), the fee shall be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14. Copies of public records may be furnished without charge or at a reduced charge if the public body determines that a waiver or reduction of the fee is in the public

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interest because furnishing copies of the public record can be considered as primarily benefiting the general public. A copy of a public record shall be furnished without charge for the first $20.00 of the fee for each request, to an individual who submits an affidavit stating that the individual is then receiving public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency.

Deposits.] (2) At the time the request is made, a public body may request a good faith deposit from the person requesting the public record or series of public records, if the fee provided in subsection (1) exceeds $50.00. The deposit shall not exceed 1/2 of the total fee.

Calculation of costs; establishment and publication of procedures for implementation.] (3) In calculating the costs under subsection (1), a public body may not attribute more than the hourly wage of the lowest paid, full-time, permanent clerical employee of the employing public body to the cost of labor incurred in duplication and mailing and to the cost of examination, review, separation, and deletion. A public body shall utilize the most economical means available for providing copies of public records. A fee shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14 unless failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs. A public body shall establish and publish procedures, and guidelines to implement this subsection.

Exceptions.] (4) This section does not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or where the amount of the fee for providing a copy of the public record is otherwise specifically provided by an act or statute.

Joint committee review.] (5) Three years after the effective date of this act a bipartisan joint committee of 3 members of each house shall review the operation of this section and recommend appropriate changes. The members of the house of representatives shall be appointed by the speaker of the house of representatives. The members of the senate shall be appointed by the majority leader of the senate. (MCL §15.234.)

Former act. The final sentence of former §3.560(121) stated that, except as otherwise provided by law, the agency might charge not more than cost for each copy of the publication.

§ 4.1801(5) Request to inspect or receive copy; oral or written.] SEC. 5. (1) A person desiring to inspect or receive a copy of a public record may make an oral or written request for the public record to the public body.

Response to request for disclosure; time limits; written notice of denial; extensions.] (2) When a public body receives a request for a public record it shall immediately, but not more than 5 business days after the day the request is received unless otherwise agreed to in writing by the person making the request, respond to the request by 1 of the following:

(a) Grant the request.

(b) Issue a written notice to the requesting person denying the request.

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(c) Grant the request in part and issue a written notice to the requesting person denying the request in part.

(d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the public body shall respond to the request. A public body shall not issue more than 1 notice of extension for a particular request.

Failure to respond; denial of request; damages.] (3) Failure to respond to a request as provided in subsection (2) constitutes a final decision by the public body to deny the request. If a circuit court, upon an action commenced pursuant to section 10, finds that a public body has failed to respond as provided in subsection (2), and if the court orders the public body to disclose or provide copies of the public record or a portion thereof, then the circuit court shall assess damages against the public body as provided in section 10**[**(5)**]**.

Notice of denial; contents.] (4) A written notice denying a request for a public record in whole or in part shall constitute a final determination by the public body to deny the request or portion thereof and shall contain:

(a) An explanation of the basis under this act or other statute for the determination that the public record, or the portion thereof, is exempt from disclosure, if that is the reason for denying the request or a portion thereof.

(b) A certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the public body, if that is the reason for denying the request or a portion thereof.

(c) A description of a public record or information on a public record which is separated or deleted as provided in section 14, if a separation or deletion is made.

(d) A full explanation of the requesting person's right to seek judicial review under section 10. Notification of the right to judicial review shall include notification of the right to receive attorneys' fees and damages as provided in section 10.

Signature.] (5) The individual designated in section 6 as responsible for the denial of the request shall sign the written notice of denial.

Extension of response period; notice; contents; action to be taken.] (6) If a public body issues a notice extending the period for a response to the request, the notice shall set forth the reasons for the extension and the date by which the public body shall do 1 of the following:

(a) Grant the request.

(b) Issue a written notice to the requesting person denying the request.

(c) Grant the request in part and issue a written notice to the requesting person denying the request in part.

Denial; right to commence suit.] (7) If a public body makes a final determination to deny in whole or in part a request to inspect or receive a copy of a public record or portion there-

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of, the requesting person may commence an action in circuit court, as provided in section 10.
(MCL §15.235.)

History.
As amended by Pub Acts 1978, No. 329, imd eff July 11.

Analysis of New Notes.

11. Construction and effect.
20. Punitive damages.

11. Construction and effect.
Public body's failure to notify, in writing, party seeking disclosure of information that request has been denied constitutes violation of Freedom of Information Act. Bredemeier v. Kentwood Board of Education, 95 Mich App 767.

20. Punitive damages.
Prerequisites to award of punitive damages in action brought pursuant to Freedom of Information Act are court-ordered disclosure and finding that defendant acted arbitrarily and capriciously in refusing to provide requested information. Bredemeier v. Kentwood Board of Education, 95 Mich App 767.

§ 4.1801(6) Individuals responsible for approval of denial to disclose requested information.] SEC. 6. (1) For a public body which is a city, village, township, county, or state department, or under the control thereof, the chief administrative officer of that city, village, township, county, or state department, or an individual designated in writing by that chief administrative officer, shall be responsible for approving a denial under section 5(4) and (5). In a county not having an executive form of government, the chairperson of the county board of commissioners shall be considered the chief administrative officer for purposes of this subsection.

(2) For all other public bodies, the chief administrative officer of the respective public body, or an individual designated in writing by that chief administrative officer, shall be responsible for approving a denial under section 5(4) and (5). (MCL §15.236.)

§ 4.1801(10) Action to compel disclosure; order for production of material, jurisdiction; burden of proof; private viewing of disputed record by court; contempt.] SEC. 10. (1) If a public body makes a final determination to deny a request or a portion thereof, the requesting person may commence an action in the circuit court to compel disclosure of the public records. If the court determines that the public records are not exempt from disclosure, the court shall order the public body to cease withholding or to produce a public record or a portion thereof wrongfully withheld, regardless of the location of the public record. The circuit court for the county in which the complainant resides or has his principal place of business, or the circuit court for the county in which the public record or an office of the public body is located shall have jurisdiction to issue the order. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

Commencement of action; confirmation of oral request in writing.] (2) An action under this section arising from the denial of an oral request may not be commenced unless the requesting person confirms the oral request in writing not less than 5 days before commencement of the action.

Expedition of actions.] (3) An action commenced pursuant to this section and appeals therefrom shall be assigned for hear-

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ing and trial or for argument at the earliest practicable date and expedited in every way.

Attorneys' fees; costs; disbursements.] (4) If a person asserting the right to inspect or to receive a copy of a public record or a portion thereof prevails in an action commenced pursuant to this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person prevails in part, the court may in its discretion award reasonable attorneys' fees, costs, and disbursements or an appropriate portion thereof. The award shall be assessed against the public body liable for damages under subsection [(5)].

Damages; actual, compensatory; punitive; assessment against public body.] (5) In an action commenced pursuant to this section, if the circuit court finds that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall, in addition to any actual or compensatory damages, award punitive damages in the amount of $500.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body, not an individual, pursuant to whose public function the public record was kept or maintained.

(MCL §15.240.)

History.

As amended by Pub Acts 1978, No. 329, imd eff July 11.

Analysis of New Notes.

12. Construction and effect.
15. Inspection by court.
16. Burden of proof.
17. Attorneys' fees and costs.
18. Damages.
20. Award.

12. Construction and effect.

Terms "arbitrarily" and "capriciously" would be given their generally accepted meaning in determining whether defendant violated provision of Freedom of Information Act providing for award of punitive damage upon finding that defendant public body has arbitrarily and capriciously violated Act by refusing or delaying in disclosing or providing copy of public record to person seeking inspection thereof. Williams v. Martimucci, 88 Mich App 198.

15. Inspection by court.

In order to reconcile policy of preserving an agency's policy-making processes with fundamental policy against secrecy of former statute, and to prevent unwarranted invasions of privacy, plaintiff corporate taxpayer's entitlement under public disclosure provisions of former Administrative Procedures Act to reports of hearing officers in hearings conducted on questions of liability for income tax assessments would be held to be subject to in-camera inspection of reports by circuit court for deletion of identifying details necessary to prevent unwarranted invasion of privacy, statements of hearing officers which reflected on revenue department's general policy discussions, and materials relating only indirectly to disposition of cases discussed in reports, with any reasonable doubt in categorizing materials being resolved in favor of disclosure. International Business Mach. Corp. v. Department of Treasury, 71 Mich App 526.

16. Burden of proof.

In action brought pursuant to Michigan Freedom of Information Act, government agency bears burden of establishing that denial of request for disclosure is statutorily supported. Penokie v. Michigan Technological University, 93 Mich App 650.

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§ 4.1801(11) Publications to be disclosed by state agency.] SEC. 11. (1) A state agency shall publish and make available to the public all of the following:

(a) Final orders or decisions in contested cases and the records on which they were made.

(b) Promulgated rules.

(c) Other written statements which implement or interpret laws, rules, or policy, including but not limited to guidelines, manuals, and forms with instructions, adopted or used by the agency in the discharge of its functions.

Same; form.] (2) Publications may be in pamphlet, looseleaf, or other appropriate form in printed, mimeographed, or other written matter.

Nonpublished material; effect; necessity for notice.] (3) Except to the extent that a person has actual and timely notice of the terms thereof, a person shall not in any manner be required to resort to, or be adversely affected by, a matter required to be published and made available, if the matter is not so published and made available.

Exemptions.] (4) This section does not apply to public records which are exempt from disclosure under section 13.

Compliance; commencement of suit; attorneys' fees, costs, disbursements; jurisdiction.] (5) A person may commence an action in the circuit court to compel a state agency to comply with this section. If the court determines that the state agency has failed to comply, the court shall order the state agency to comply and shall award reasonable attorneys' fees, costs, and disbursements to the person commencing the action. The circuit court for the county in which the state agency is located shall have jurisdiction to issue the order.

State agency, contested case, rules; defined.] (6) As used in this section, "state agency", "contested case", and "rules" shall have the same meanings as ascribed to those terms in Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws. (MCL §15.241.)

Former act. The initial paragraph of former §3.560(123) was substantially identical to paragraph (3) of this section.

The second paragraph of the aforesaid former section empowered the circuit court for the county wherein the agency records were situated to order, on petition of any person, the production of "any identifiable material improperly withheld from public inspection and copying."

Statutory reference. Act No. 306 of 1969, above referred to, is §§3.560(101)–3.560(215), supra.

§ 4.1801(13) Exemptions; withholding of information.] SEC. 13. (1) A public body may exempt from disclosure as a public record under this act:

(a) Information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.

(b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:

(i) Interfere with law enforcement proceedings.

(ii) Deprive a person of the right to a fair trial or impartial administrative adjudication.

(iii) Constitute an unwarranted invasion of personal privacy.

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(iv) Disclose the identity of a confidential source, or if the record is compiled by a criminal law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.

(v) Disclose law enforcement investigative techniques or procedures.

(vi) Endanger the life or physical safety of law enforcement personnel.

(c) A public record which if disclosed would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.

(d) Records or information specifically described and exempted from disclosure by statute.

(e) Information the release of which would prevent the public body from complying with 20 USC section 1232g.

(f) A public record or information described in this section which is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the considerations originally giving rise to the exempt nature of the public record remain applicable.

(g) Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy if:

(i) The information is submitted upon a promise of confidentiality by the public body.

(ii) The promise of confidentiality is authorized by the chief administrative officer of the public body or by an elected official at the time the promise is made.

(iii) A description of the information is recorded by the public body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person upon request. This subdivision shall not apply to information submitted as required by law or as a condition of receiving a governmental contract, license, or other benefit.

(h) Information or records subject to the attorney-client privilege.

(i) Information or records subject to the physician-patient, psychologist-patient, minister, priest or Christian science practitioner, or other privilege recognized by statute or court rule.

(j) A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the time for the receipt of bids or proposals has expired.

(k) Appraisals of real property to be acquired by the public body until (i) an agreement is entered into; or (ii) 3 years has elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.

(l) Test questions and answers, scoring keys, and other examination instruments or data used to administer a license, public employment, or academic examination, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.

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(m) Medical, counseling, or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation.

(n) Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communications between officials and employees of public bodies clearly outweighs the public interest in disclosure. This exemption does not constitute an exemption under state law for purposes of section 8(h) of Act No. 267 of the Public Acts of 1976, being section 15.268 of the Michigan Compiled Laws. As used in this subdivision, "determination of policy or action" includes a determination relating to collective bargaining, unless the public record is otherwise required to be made available under Act No. 336 of the Public Acts of 1947, as amended, being sections 423.201 to 423.216 of the Michigan Compiled Laws.

(o) Records of law enforcement communication codes, or plans for deployment of law enforcement personnel, which if disclosed would prejudice a public body's ability to protect the public safety unless the public interest in disclosure under this act outweighs the public interest in nondisclosure in the particular instance.

(p) Information which would reveal the exact location of archeological sites. The secretary of state may promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, to provide for the disclosure of the location of archeological sites for purposes relating to the preservation or scientific examination of sites.

(q) Testing data developed by a public body in determining whether bidders' products meet the specifications for purchase of those products by the public body, if disclosure of the data would reveal that only 1 bidder has met the specifications. This subdivision shall not apply after 1 year has elapsed from the time the public body completes the testing.

(r) Academic transcripts of an institution of higher education established under sections 5, 6 or 7 of article 8 of the state constitution of 1963, where the record pertains to a student who is delinquent in the payment of financial obligations to the institution.

(s) Records of any campaign committee including any committee that receives monies from a state campaign fund.

(t) Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a police or sheriff's agency or department, the release of which would do any of the following:

(i) Identify or provide a means of identifying an informer.

(ii) Identify or provide a means of identifying a law enforcement undercover officer or agent or a plain clothes officer as a law enforcement officer or agent.

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(iii) Disclose the personal address or telephone number of law enforcement officers or agents or any special skills that they may have.

(iv) Disclose the name, address, or telephone numbers of family members, relatives, children, or parents of law enforcement officers or agents.

(v) Disclose operational instructions for law enforcement officers or agents.

(vi) Reveal the contents of staff manuals provided for law enforcement officers or agents.

(vii) Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents, or those who furnish information to law enforcement departments or agencies.

(viii) Identify or provide a means of identifying a person as a law enforcement officer, agent, or informer.

(ix) Disclose personnel records of law enforcement agencies.

(x) Identify or provide a means of identifying residences which law enforcement agencies are requested to check in the absence of their owners or tenants.

(2) This ♦ [act shall] not authorize the withholding of information otherwise required by law to be made available to the public, or to a party in a contested case under Act No. 306 of the Public Acts of 1969, as amended.

(MCL §15.243.)

History.

As amended by Pub Acts 1978, No. 329, imd eff July 11.

Statutory references.

Section 8(h) of Act No. 266 of 1976 [although Act No. 267 appears above, §15.268 of Michigan Compiled Laws is in Act No. 266 of 1976], above referred to, is §4.1800(18), supra; Act No. 336 of 1947 is §§17.-455(1)–17.455(16), infra; Act No. 306 of 1969 is §§3.560(101)–3.560 (215), supra.

Analysis of New Notes.

11. Construction and effect.
12. Disclosure.
14. Immunity from civil action.

ALR notes.

11. Construction and effect.

Judicial interpretation of freedom of information act's privacy exemption, in addition to being guided by reasoning of federal and state decisions interpreting similar provisions, must reflect Michigan's long-standing policy of citizen accessibility to public records. Penokie v. Michigan Technological University, 93 Mich App 650.

In light of absence of Michigan case law interpreting exemption provision of Freedom of Information Act, trial court properly turned to federal decisions interpreting similar provision in federal act. Penokie v. Michigan Technological University, 93 Mich App 650.

12. Disclosure.

Hearing officers' reports, tax determination orders, and revenue commissioner's apportionment or allocation determinations in connection with questions raised in regard to liability for income tax assessments would be held not to be exempt from disclosure to plaintiff taxpayer as including intra-agency memoranda or statements allegedly exempt from former public disclosure provisions of Administrative Procedures Act, where such memoranda were already released to taxpayer and, accordingly, could not be said to come within intent of statutory exemption to protect integrity of decision making processes within agency by preserving candor which with agency employees communicate. International Business Mach. Corp. v. Department of Treasury, 71 Mich App 526.

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Records of names and compensation of employees of state universities are subject to public examination, inspection and copying for any lawful purpose. Op Atty Gen, August 7, 1978, No. 4794 (approved in Penokie v. Michigan Technological University, 93 Mich App 650.

Provision of Freedom of Information Act permitting public body to exempt public record from disclosure where disclosure would constitute clearly unwarranted invasion of individual's privacy does not permit exemption of salary records of state university employees from disclosure. Penokie v. Michigan Technological University, 93 Mich App 650.

Since certain records are protected from disclosure by the Social Welfare Act, they are exempt from disclosure under Section 13(1)(d) of the Freedom of Information Act which exempts records that are exempt from disclosure by statute. Op Atty Gen, February 1, 1979, No. 5436.

The photograph of a convicted individual contained in the arrest file must, on request, be disclosed.

§ 4.1801(14) Public record containing exempt and nonexempt material; separation.] SEC. 14. (1) If a public record contains material which is not exempt under section 13, as well as material which is exempt from disclosure under section 13, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.

Public record design; separation of exempt and nonexempt information; disclosure, description of material exempted.] (2) When designing a public record, a public body shall, to the extent practicable, facilitate a separation of exempt from nonexempt information. If the separation is readily apparent to a person requesting to inspect or receive copies of the form, the public body shall generally describe the material exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption. (MCL §15.244.)

* * *

BUREAU OF CRIMINAL IDENTIFICATION

Act 289, 1925, p 427; imd eff May 13.

(Title as amended by Act 197, 1931, p 323; imd eff May 28.)

AN ACT to create a bureau of criminal identification[, records and statistics] within the department of public safety ♦ [; to provide for a director thereof; to prescribe his duties;] to require peace officers, persons in charge of certain ♦ institutions and others, to make reports respecting [crimes and] criminals to such bureau and to provide a penalty for violation of the provisions thereof.

The People of the State of Michigan enact:

§ 4.461] Bureau of criminal identification[, records and statistics]; establishment. SEC. 1. A bureau of criminal identification[, records and statistics] is hereby created under the supervision of the department of public safety. The commissioner of public safety shall appoint a person to have direction and control of such bureau, in the same manner as other deputies, assistants and em-

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ployes of such department are appointed. Such bureau shall be supplied with necessary apparatus and materials for collecting, filing and preserving criminal records filed with the bureau. (MCL §28.241; CL '29, §567.)

History. As amended by Pub Acts 1931, No. 197, imd eff May 28.

Cross-reference. Division of criminal statistics in department of corrections, see §28.2278, infra.

1-10. [Reserved for use in future supplementation.]

11. Department of public safety. Transfer of duties to Michigan state police, see §4.435, supra.

Legal periodical. Discussion of the 1931 amendment of this act, see 1 Det L Rev 183.

§ 4.462 Duties of director of bureau of criminal investigation.] SEC. 2. [(1)] The director of [the] bureau shall procure and file for record, photographs, pictures, descriptions, fingerprints, measurements, and ♦ other [pertinent] information ♦ [on] all persons who have been or may hereafter be convicted [within the state] of a felony or of a misdemeanor ♦ [for which the maximum possible penalty exceeds 92 days imprisonment or a fine of $500.00, or both] and also of all well known and habitual criminals ♦ [wherever] procured.

[(2)] The director of [the] bureau shall collect information concerning the number and nature of offenses known to have been committed in this state, of the legal steps taken in connection ♦ [with these offenses] from the inception of the complaint to the final discharge of the defendant, and ♦ other information ♦ useful in the study of crime and the administration of justice. This information ♦ [shall] comprise only [the] crimes, legal steps, and information ♦ [which] the director of the bureau ♦ [designates]. The information ♦ collected shall include [the] data ♦ required by the United States department of justice ♦ under its national system of crime reporting.

♦ [(3)] The director ♦ [shall] provide all reporting officials with forms and instructions which specify in detail the nature of the information required, the time it is to be forwarded, the method of classifying, and ♦ other matters ♦ [to] facilitate its collection and compilation. The director shall also cooperate with and assist sheriffs, chiefs of police, and other law officers in the establishment of a complete state system of criminal identification and in obtaining fingerprints and other means of identification of all persons arrested on a complaint of felony or of a misdemeanor ♦ [for which the maximum possible penalty exceeds 92 days imprisonment or a fine of $500.00, or both.

(4) The director] shall ♦ file for record the fingerprint impressions of all persons confined in ♦ [a] jail, reformatory, penitentiary, or other penal institution.

(MCL §28.242.)

History.
As amended by Pub Acts 1978, No. 538, imd eff December 22.

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§ 4.463 Fingerprinting; release without charge, finding of not guilty, return of arrest card, fingerprints and description; procedure; mandamus; reports; inapplicability of section, exceptions.] SEC. 3. ♦ [(1)] The sheriffs of the several counties of this state, chiefs of police of the cities, and village marshals, immediately upon the arrest of any person for a felony or ♦ [for] a misdemeanor ♦ [for which the maximum possible penalty exceeds 92 days imprisonment or a fine of $500.00, or both, shall] take ♦ [the person's] fingerprints, in duplicate, 1 set of fingerprints, according to the fingerprint system of identification established by the director of [the] bureau and on forms furnished by ♦ [the director], and 1 set of fingerprints according to the fingerprint system of identification established by the director of the federal bureau of investigation ♦ on forms furnished by ♦ [the director thereof], and forward ♦ [this information], together with ♦ other descriptions and [required] information ♦ to [the] bureaus for filing and classification.

♦ [(2) If a] person accused thereafter ♦ [is] released without a charge made against him ♦ [or her], the official taking or holding ♦ [an] accused's fingerprints, arrest card, and description ♦ [shall immediately] return ♦ [this information] without the necessity of a request ♦. If not ♦ returned, the accused ♦ released shall have the absolute right to demand and receive [the] return at any time after [the] release and without need to petition for court action.

♦ [(3) If an] accused thereafter ♦ [is] found not guilty of the offense charged ♦, the arrest card, the fingerprints, and description shall be returned to him [or her] by a court order signed by the trial court and directed to the official holding ♦ [this information], which order shall issue automatically upon [the] finding of not guilty without the necessity of request therefor. If for any reason [the] order of return ♦ [is not issued] upon a finding of not guilty, the accused shall have the absolute right to [the] return, upon request, at any time after [the] acquittal. ♦ [If the] order of return ♦ [is] refused ♦ [the accused], the accused shall have the right to petition the circuit court of the county where the original charge was made for a preemptory writ of mandamus to require issuance of [the] order of return.

♦ [(4)] The clerk of any court, the arresting officer, or ♦ other official ♦ [which] the director ♦ [designates, shall] immediately advise the director of the bureau and the director of the federal bureau of investigation [of] the final disposition of the arrest for which the accused was fingerprinted. The director shall compare the fingerprints and description received with those already on file in the bureau and if ♦ [the director] finds that the person arrested has a criminal record or is a fugitive from justice, ♦ [the director] shall ♦ [immediately] inform the arresting officer of ♦ [this] fact. ♦ [The following persons shall render to the director the information required in conformity with section 2:

(a) Each] police department, sheriff, constable, or other police agency.

♦ [(b) The clerk, judge], or other appropriate official for ♦ [each] criminal ♦ [court.

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(c) Each] prosecuting, probation, ♦ [or] parole ♦ [officer.

(d) The] head of a department, board, commission, bureau, or institution of the state, or ♦ [a] political subdivision ♦ [of the state], having to do directly or indirectly with crime or criminals.

♦[(e) A] person who by reason of his [or her] office is qualified to furnish the data required.

♦ [(5)] Where the sheriff or other county officer is designated by the director as the person to whom the information is to be reported ♦ [pursuant to subsection (4)], the appropriate officials ♦ [shall] report ♦ [this] information to ♦ [that person]. The county officer so designated shall compile this information in [the] manner ♦ [determined by] the director ♦ and [shall] forward a consolidated report to the director.

[(6)] The provisions of this section requiring the return of the fingerprints, arrest card, and description shall not apply [in any of the following instances unless a judge of a court of record, except the probate court, by express order entered of record, orders the return:

(a)] Where the person arrested has ♦ [a] prior conviction, [except a] misdemeanor traffic ♦ [offense.

(b)] Where the person arrested was charged with the commission or attempted commission, with or against a child under ♦ 16 years of [age, or] the crime of [criminal sexual conduct in any degree,] rape, sodomy, gross indecency, or indecent liberties ♦.

(MCL §28.243.)

History.
As amended by Pub Acts 1978, No. 538, imd eff December 22.

12. Return of fingerprints and arrest records.
Where a person is arrested and is released without charge or is found not guilty, the police identifying records must be delivered to the individual. Op Atty Gen, November 14, 1979, No. 5593.

§ 4.463(1) Refusing or resisting fingerprinting; misdemeanor.] SEC. 3a. Any person required to have his fingerprints taken under section 3 who refuses to allow or resists the taking of his fingerprints is guilty of a misdemeanor. Such person must be advised that his refusal constitutes a misdemeanor. (MCL §28.243a.)

History. Added by Pub Acts 1968, No. 174, eff November 15.

§ 4.464] Cooperation [with state and national bureaus]. SEC. 4. It shall be the duty of the director to cooperate with the bureaus in other states and with the national bureau in the department of justice in Washington, to develop and carry on a complete

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interstate, national and international system of criminal identification[, records and statistics]. (MCL §28.244; CL '29, §570.)

History. As amended by Pub Acts 1931, No. 197, imd eff May 28.

§ 4.465] Same; local bureaus. SEC. 5. It shall be the duty of the superintendent to offer assistance and when practicable, instruction, to sheriffs, chiefs of police and other peace officers in establishing an efficient local bureau of identification in their districts. (MCL §28.245; CL '29, §571.)

§ 4.466] Penalty. SEC. 6. Neglect or refusal of any of the officers herein mentioned, to make the report required herein or to do or perform any other act on his part to be done or performed, shall constitute a misdemeanor and such officer shall upon conviction thereof, be punished by a fine of not less than five [5] nor more than twenty-five [25] dollars, or by imprisonment in the county jail for a period of not exceeding thirty [30] days or by both such fine and imprisonment in the discretion of the court. Such neglect or refusal shall also constitute nonfeasance in office and subject the officer to removal from office. (MCL §28.246; CL '29, §572.)

Textbook reference. See Callaghan's Mich Civ Jur, Sheriffs and Constables §9.

§ 4.467] (Repealed by Pub Acts 1945, No. 267, imd eff May 25.)

§ 4.467(1) Reports to commissioner relative to sexually motivated crimes; filing, confidential nature, examination, penalty.] SEC. 7. The sheriff of every county and the chief executive officer of the police department of every city, village and township shall make such reports of accused persons against whom a warrant has been issued and the disposition thereof in sexually motivated crimes verified as such and the disposition of cases resulting therefrom to the commissioner as he may require on forms provided by him. The commissioner shall file such reports or copies thereof in a separate confidential filing system and such reports shall be available for examination only by the attorney general, any prosecuting attorney, any court of record, sheriffs, and the chief executor officer of the police department of any city, village or township and their authorized officers and by them held confidential except for official use. Any person who violates any of the confidential provisions of this section shall be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than 1 year and/or by a fine of not more than $500.00. (MCL §28.247.)

History. Added by Pub Acts 1955, No. 132, imd eff June 7.

1-10. [Reserved for use in future supplementation.]

11. Disposition of reports. Reports of sexually-motivated crimes or copies thereof filed with the commissioner of state police in separate confidential filing system are not required to be returned upon request of accused found not guilty of offense charged. Op Atty Gen, December 29, 1956, No. 2833.

12. Status of reports. Except for records of sexually motivated crimes, criminal records of convicted individuals are not confidential. Op Atty Gen, December 9, 1969, No. 4683.

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§ 14.15(7411) First offense; deferral of proceedings; probation; terms and conditions; violation; discharge and dismissal; limitations; records.] SEC. 7411. (1) When an individual who has not previously been convicted of an offense under this article or under any statute of the United States or of any state relating to narcotic drugs, coca leaves, marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under section 7403(2)(a)(iv), (b), (c), or (d) or of use of a controlled substance under section 7404, the court, without entering a judgment of guilt with the consent of the accused, may defer further proceedings and place the individual on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the individual and dismiss the proceedings. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under section 7413. There may be only 1 discharge and dismissal under this section as to an individual. The records and identifications division of the department of state police shall retain a nonpublic record of an arrest and discharge or dismissal under this section. This record shall be furnished to a court or police agency upon request for the purpose of showing that a defendant in a criminal action involving the use of a controlled substance covered in this article has already once utilized this section.

Conviction; instruction or rehabilitation program; required attendance; exception; payment; violation.] (2) If an individual is convicted of a violation of this article, other than a violation of section 7401(2)(a)(i) to (iii) or section 7403(2)(a)(i) to (iii), the court as part of the sentence, during the period of confinement or the period of probation, or both, may require the individual to attend a course of instruction or rehabilitation program approved by the department on the medical, psychological, and social effects of the misuse of drugs. The court may order the individual to pay a fee, as approved by the director, for the instruction or program. Failure to complete the instruction or program shall be considered a violation of the terms of probation. (MCL §333.7411.)

Former act. Former §18.1070(47) contained provisions substantially similar to this section.

1-10. [Reserved for use in future supplementation.]

11. Validity. On appeal from conviction of defendant on plea of guilty to charge of unlawful possession of narcotics, contention of defendant that "first offense" penalty provision of former statute was denial of equal protection of laws and due process of law was held to be without substance. People v. Randle, 17 Mich App 607.

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§ 28.760 Inspection and use of public records; copies; removal orders.] SEC. 492. Any officer having the custody of any county, city or township records in this state who shall when requested fail or neglect to furnish proper and reasonable facilities for the inspection and examination of the records and files in his office and for making memoranda of transcripts therefrom during the usual business hours, which shall not be less than 4 hours per day, to any person having occasion to make examination of them for any lawful purpose shall be guilty of a misdemeanor, punishable by imprisonment in the county jail not more than 1 year, or by a fine of not more than $500.00. ♦ The custodian of said records and files may make such reasonable rules ♦ with reference to the inspection and examination of them as shall be necessary for the protection of said records and files, and to prevent interference with the regular discharge of the duties of such officer. ♦ [The] officer shall prohibit the use of pen and ink in making copies or notes of records and files in his office. ♦ No books, records and files shall be removed from the office of the custodian thereof ♦, except by the order of the judge of any court of competent jurisdiction, or in response to a subpoena duces tecum issued therefrom[, or for audit purposes conducted pursuant to Act No. 71 of the Public Acts of 1919, as amended, being sections 21.41 to 21.53 of the Compiled Laws of 1948, Act No. 52 of the Public Acts of 1929, being sections 14.141 to 14.145 of the Compiled Laws of 1948 or Act No. 2 of the Public Acts of 1968, being sections 141.421 to 141.433 of the Compiled Laws of 1948 with the permission of the official having custody of the records if the official is given a receipt listing the records being removed].

(CL '48, § 750.492.)

History.

As amended by Pub Acts 1970, No. 109, imd eff July 23.

See Pub Acts 1899, No. 133, imd eff June 1; CL '15, § 3449; CL '29, §§ 2713–2715.

Statutory references.

Act No. 71 of 1919, above referred to, is §§ 3.591–3.604, supra; Act No. 52 of 1929 is §§ 3.241–3.245, supra; Act No. 2 of 1968 is §§ 5.3228(21)–5.3228(33), supra.

1-10. [Reserved for use in future supplementation.]

11. Application.

The provisions of this section do not apply to records in the custody of a village clerk, but interested parties have the right under the common law to inspect such records. Op Atty Gen, April 2, 1957, No. 2969.

12. Definitions.

The term "public records" included lists of county road commission employees; "lawful purpose" means such purpose as subserves any legitimate interest; "any person" means all persons, whether or not they are citizens or taxpayers of the community. Op Atty Gen, November 7, 1956, No. 2786.

13. Examination of records.

Any person is entitled to examine original documents recorded in office of register of deeds, notwithstanding they have been placed under lock and key, and statute does not provide any charges or fees for such examination. Op Atty Gen, 1937–1938, p 200.

Poll lists are public records and a township clerk must provide proper and reasonable facilities for inspection and examination by the public. Op Atty Gen, 1937–1938, p 202.

Vital statistics and records of local boards of health, except those declared by § 14.342 not to be public records and those required to be made by an attending physician or by a local health unit, and which are made confidential by statute, are open to public inspection. Op Atty Gen, November 16, 1939.

Records of city health officer, except such as are declared by §§ 14.342 and 14.404 not to be open to public inspection, are public records and are open to inspection by public and health study commission appointed by mayor of city. Op Atty Gen, 1941–1942, p 540, No. 22822.

Although not specifically made applicable to school districts, it gives school elector right to examine books and records of school district, sub-

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ject to such rules as district officers deem necessary to protect such records. Op Atty Gen, July 3, 1942, No. 21795.

This section is not modified or restricted by the specified offices mentioned in § 28.759, as amended. Op Atty Gen, March 8, 1954, No. 1758.

The secretary of state may impose reasonable regulations pertaining to times and manner of inspection of records of which he is custodian. Op Atty Gen, October 25, 1956, No. 2713.

Public records in custody of register of deeds may be examined by any interested person who desires to inspect same for any lawful purpose, examination and copying of same for purpose of publishing being a lawful purpose. Op Atty Gen, March 5, 1958, No. 3111.

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	299C.06	X		
2. Privacy and Security Council	15.169	X		
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	299C.13	X		
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	364.04 15.1641; 15.1621	X		X
3.12 Authorizes to Private Sector	15.1641 15.1621			X X
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	299C.13	X		
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	364.04 15.1641; 15.1621	X		X
3.22 Authorizes to Private Sector	15.1641 15.1621			X X
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	299C.13	X		
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	364.04 15.162.2a	X		X
3.32 Authorizes to Private Sector	15-162.2a			X
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	Reg. VI 15.165		X	X
5. Right to Challenge	Reg. VI 15.165		X	X
6. Judicial Review of Challenged Information	15.165 15.0424	X		X
7. Purging Non-Conviction Information	152.18 299C.11	X		X
8. Purging Conviction Information	152.18 364.04	X		X

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information	152.18 299C.11	X		X
10. Sealing Conviction Information	638.02 364.04 242.31	X		X X
11. Removal of Disqualifications	364.03 152.18 242.31	X		X X
12. Right to State Non-Existence of Record	152.18			X
13. Research Access	15.1621 15.1641 Reg. VB			X X
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	299C.06; 299C.09; 299C.17	X		
14.2 Auditing Requirements	299C.06	X		
14.3 Other Accuracy/Completeness Requirements	15.1641 Reg. IC, Reg. II 299C.10	X	X	X
15. Dedication				
16. Civil Remedies	299C.21 15.166 & 167	X		X
17. Criminal Penalties	15.167			X
18. Public Records	15.17	X		
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination	15.162(2a)			X
22. Security				
22.1 Physical (Building) Security	15.1641			X
22.2 Administrative Security				
22.3 Computer Security	Reg. IV 15.1641		X	X
23. Transaction Logs	Reg. VI		X	
24. Training Employees				
25. Listing of Information Systems	15.163			X
26. FOIA (Including CJI)	15.162 et. seq.			X
27. FOIA (Excluding CJI)				
28. Central State Repository	299C.05, 06	X		

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15.162 COLLECTION, SECURITY AND DISSEMINATION OF RECORDS; DEFINITIONS. Subdivision 1. As used in sections 15.162 to 15.1671 the terms defined in this section have the meanings given them.

Subd. 1a. "Arrest information" shall include (a) the name, age, and address of an arrested individual; (b) the nature of the charge against the arrested individual; (c) the time and place of the arrest; (d) the identity of the arresting agency; (e) information as to whether an individual has been incarcerated and the place of incarceration. "Arrest information" does not include data specifically made private, confidential or nonpublic pursuant to section 260.161 or any other statute.

Subd. 2. "Commissioner" means the commissioner of the department of administration.

Subd. 2a. "Confidential data on individuals" means data which is (a) made not public by statute or federal law applicable to the data and is inaccessible to the individual subject of that data; or (b) collected by a civil or criminal investigative agency as part of an active investigation undertaken for the purpose of the commencement of a legal action, provided that the burden of proof as to whether such investigation is active or in anticipation of a legal action is upon the agency. Confidential data on individuals does not include arrest information that is reasonably contemporaneous with an arrest or incarceration. The provision of clause (b) shall terminate and cease to have force and effect with regard to the state agencies, political subdivisions, statewide systems, covered by the ruling, upon the granting or refusal to grant an emergency classification pursuant to section 15.1642 of both criminal and civil investigative data, or on July 31, 1979, whichever occurs first.

Subd. 3. "Data on individuals" includes all records, files and processes which contain any data in which an individual is or can be identified and which are retained or intended to be retained on a permanent or temporary basis. It includes data collected, stored, or disseminated by manual, mechanical, electronic or any other means. Data on individuals are classified as public, private or confidential.

Subd. 4. "Individual" means a natural person. In the case of a minor, "individual" includes a parent or guardian or an individual acting as a parent or guardian in the absence of a parent or guardian, except that the responsible authority shall withhold data from parents or guardians, or individuals acting as parents or guardians in the absence of parents or guardians, upon request by the minor if the responsible authority determines that withholding the data would be in the best interest of the minor.

Subd. 5. "Political subdivision" any county, statutory or home rule charter city, school district, special district and any board, commission, district or authority created pursuant to law, local ordinance or charter provision. It includes any nonprofit corporation which is a community action agency organized pursuant to the economic opportunity act of 1964 (P.L. 88-452) as amended, to qualify for public funds, or any nonprofit social service agency which performs services under contract to any political subdivision, statewide system or state agency, to the extent that the nonprofit social service agency or nonprofit corporation collects, stores, disseminates, and uses data on individuals because of a contractual relationship with state agencies, political subdivisions or statewide systems.

Subd. 5a. "Private data on individuals" means data which is made by statute or federal law applicable to the data: (a) not public; and (b) accessible to the individual subject of that data. Private data on individuals does not include arrest information that is reasonably contemporaneous with an arrest or incarceration.

Subd. 5b. "Public data on individuals" means data which is accessible to the public in accordance with the provisions of section 15.17.

Subd. 6. "Responsible authority" in a state agency or statewide system means the state official designated by law or by the commissioner as the individual responsible for the collection, use and dissemination of any set of data on individuals or summary data. "Responsible authority" in any political subdivision means the individual designated by the governing body of that political subdivision as the individual responsible for the collection, use, and dissemination of any set of data on individuals or summary data, unless otherwise provided by state law.

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Subd. 7. "State agency" means the state, the university of Minnesota, and any office, officer, department, division, bureau, board, commission, authority, district or agency of the state.

Subd. 8. "Statewide system" includes any record-keeping system in which data on individuals is collected, stored, disseminated and used by means of a system common to one or more state agencies or more than one of its political subdivisions or any combination of state agencies and political subdivisions.

Subd. 9. "Summary data" means statistical records and reports derived from data on individuals but in which individuals are not identified and from which neither their identities nor any other characteristic that could uniquely identify an individual is ascertainable.

[*1974 c 479 s 1; 1975 c 401 s 1; 1976 c 239 s 2; 1976 c 283 s 1-5; 1977 c 375 s 1-5; 1978 c 790 s 1*]

15.163 LISTS OF NONPUBLIC DATA. Subdivision 1. On or before August 1, 1976, the responsible authority shall prepare a public document containing his name, title and address, and a description of each category of record, file, or process relating to private or confidential data on individuals maintained by his state agency, statewide system, or political subdivision. Forms used to collect private and confidential data shall be included in the public document. Beginning August 1, 1977 and annually thereafter, the responsible authority shall update the public document and make any changes necessary to keep it accurate.

Subd. 2. The commissioner may require responsible authorities to submit copies of the public document required in subdivision 1, and may request additional information relevant to data collection practices, policies and procedures.

[*1974 c 479 s 2; 1975 c 401 s 2; 1976 c 239 s 3; 1976 c 283 s 6,7*]

15.164 [Repealed, 1975 c 401 s 9

15.1641 DUTIES OF RESPONSIBLE AUTHORITY. (a) Data on individuals is under the jurisdiction of the responsible authority who may appoint an individual to be in charge of each file or system containing data on individuals.

(b) Collection and storage of public, private or confidential data on individuals and use and dissemination of private and confidential data on individuals shall be limited to that necessary for the administration and management of programs specifically authorized by the legislature, local governing body or mandated by the federal government.

(c) Private or confidential data on individuals shall not be used, collected, stored or disseminated for any purposes other than those stated to an individual at the time of collection in accordance with section 15.165 or, in the case of data collected prior to August 1, 1975, for any purpose other than those originally authorized by law, unless (1) the responsible authority files a statement with the commissioner describing the purpose and necessity of the purpose with regard to the health, safety or welfare of the public and the purpose is approved by the commissioner, or (2) the purpose is subsequently authorized by the state or federal legislature, or (3) the purpose is one to which the individual subject or subjects of the data have given their informed consent.

(d) The use of summary data derived from private or confidential data on individuals under jurisdiction of one or more responsible authorities shall be permitted, provided that summary data is public pursuant to section 15.17. The responsible authority shall prepare summary data from private or confidential data on individuals upon the request of any person, provided that the request is in writing and the cost of preparing the data is borne by the requesting person. The responsible authority may delegate the power to prepare summary data to the administrative officer responsible for any central repository of summary data, or to a person outside of its agency if the person agrees in writing not to disclose private or confidential data on individuals.

(e) The responsible authority shall establish procedures and safeguards to ensure that all public, private or confidential data on individuals is accurate, complete and current. Emphasis shall be placed on the data security requirements of computerized files containing private or confidential data on individuals which are accessible directly via telecommunications technology, including security during transmission.

[*1975 c 401 s 3*]

15.1642 EMERGENCY CLASSIFICATION. Subdivision 1. Application. The responsible authority of a state agency, political subdivision or statewide system may apply to the commissioner for permission to classify data or types of data on individuals as private or confidential, for its own use and for the use of other similar agencies,

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political subdivisions or statewide systems on an emergency basis until a proposed statute can be acted upon by the legislature. The application for emergency classification is public.

Upon the filing of an application for emergency classification, the data which is the subject of the application shall be deemed to be classified as set forth in the application for a period of 30 days, or until the application is disapproved or granted by the commissioner, whichever is earlier.

Subd. 2. **Contents of application.** An application for emergency classification shall include and the applicant shall have the burden of clearly establishing at least the following information:

(a) That no statute currently exists which either allows or forbids classification as private or confidential;

(b) That data similar to that for which the emergency classification is sought has been treated as either private or confidential by other state agencies or political subdivisions, and by the public; and

(c) That a compelling need exists for immediate emergency classification, which if not granted could adversely affect the public interest or the health, safety, well being or reputation of the data subject.

Subd. 3. **Determination.** The commissioner shall either grant or disapprove the application for emergency classification within 30 days after it is filed. If the commissioner disapproves the application, he shall set forth in detail his reasons for the disapproval, and shall include a statement of what classification he believes is appropriate for the data which is the subject of the application. Ten days after the date of the commissioner's disapproval of an application, the data which is the subject of the application shall become public data on individuals, unless the responsible authority submits an amended application for emergency classification which requests the classification deemed appropriate by the commissioner in his statement of disapproval or which sets forth additional information relating to the original proposed classification. Upon the filing of an amended application, the data which is the subject of the amended application shall be deemed to be classified as set forth in the amended application for a period of 15 days or until the amended application is granted or disapproved by the commissioner, whichever is earlier. The commissioner shall either grant or disapprove the amended application within 15 days after it is filed. Five working days after the date of the commissioner's disapproval of the amended application, the data which is the subject of the application shall become public data on individuals. No more than one amended application may be submitted for any single file or system which contains data on individuals.

If the commissioner grants an application for emergency classification, it shall become effective immediately, and the complete record relating to the application shall be submitted to the attorney general, who shall review the classification as to form and legality. Within 20 days, the attorney general shall approve the classification, disapprove a classification as confidential but approve a classification as private, or disapprove the classification. If the attorney general disapproves a classification, the data which is the subject of the classification shall become public data five working days after the date of the attorney general's disapproval.

Subd. 4. **Pending applications.** All applications for emergency classification which are pending on June 3, 1977 shall be deemed to have been filed on June 3, 1977.

Subd. 5. **Expiration of emergency classification.** All emergency classifications granted under this section and still in effect shall expire on July 31, 1979. No emergency classifications shall be granted after July 31, 1979.

[*1976 c 283 s 8; 1977 c 375 s 6; 1978 c 790 s 2*]

15.1643 INTERNATIONAL DISSEMINATION PROHIBITED. No state agency or political subdivision shall transfer or disseminate any private or confidential data on individuals to the private international organization known as Interpol.

[*1978 c 790 s 3*]

NOTE: Section 15.1643 is effective April 1, 1980. See Laws 1978, Chapter 790, Section 5, Subdivision 2.

15.165 RIGHTS OF SUBJECTS OF DATA. Subdivision 1. The rights of individuals on whom the data is stored or to be stored shall be as set forth in this section.

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Subd. 2. An individual asked to supply private or confidential data concerning himself shall be informed of: (a) the purpose and intended use of the requested data within the collecting state agency, political subdivision or statewide system; (b) whether he may refuse or is legally required to supply the requested data; (c) any known consequence arising from his supplying or refusing to supply private or confidential data; and (d) the identity of other persons or entities authorized by state or federal law to receive the data.

Subd. 3. Upon request to a responsible authority, an individual shall be informed whether he is the subject of stored data on individuals, and whether it is classified as public, private or confidential. Upon his further request, an individual who is the subject of stored private data on individuals shall be shown the data without any charge to him and, if he desires, shall be informed of the content and meaning of that data. After an individual has been shown the private data and informed of its meaning, the data need not be disclosed to him for six months thereafter unless a dispute or action pursuant to this section is pending or additional data on the individual has been collected. The responsible authority shall provide copies of the private data upon request by the individual subject of the data. The cost of providing copies shall be borne by the individual.

The responsible authority shall comply immediately, if possible, with any request made pursuant to this subdivision, or within five days of the date of the request, excluding Saturdays, Sundays and legal holidays, if immediate compliance is not possible. If he cannot comply with the request within that time, he shall so inform the individual, and may have an additional five days within which to comply with the request, excluding Saturdays, Sundays and legal holidays.

Subd. 4. An individual may contest the accuracy or completeness of public or private data concerning himself. To exercise this right, an individual shall notify in writing the responsible authority describing the nature of the disagreement. The responsible authority shall within 30 days either: (a) correct the data found to be inaccurate or incomplete and attempt to notify past recipients of inaccurate or incomplete data, including recipients named by the individual; or (b) notify the individual that he believes the data to be correct. Data in dispute shall be disclosed only if the individual's statement of disagreement is included with the disclosed data.

The determination of the responsible authority may be appealed pursuant to the provisions of the administrative procedure act relating to contested cases.

[*1974 c 479 s 4; 1975 c 401 s 4; 1977 c 375 s 7*]

15.166 CIVIL PENALTIES. Subdivision 1. Notwithstanding section 466.03, a political subdivision responsible authority or state agency which violates any provision of sections 15.162 to 15.1671 is liable to a person who suffers any damage as a result of the violation, and the person damaged may bring an action against the political subdivision, responsible authority or state agency to cover any damages sustained, plus costs and reasonable attorney fees. In the case of a willful violation, the political subdivision or state agency shall, in addition, be liable to exemplary damages of not less than $100, nor more than $1,000 for each violation. The state is deemed to have waived any immunity to a cause of action brought under sections 15.162 to 15.1671.

Subd. 2. A political subdivision, responsible authority or state agency which violates or proposes to violate sections 15.162 to 15.1671 may be enjoined by the district court. The court may make any order or judgment as may be necessary to prevent the use or employment by any person of any practices which violate sections 15.162 to 15.1671.

Subd. 3. An action filed pursuant to this section may be commenced in the county in which the individual alleging damage or seeking relief resides, or in the county wherein the political subdivision exists, or, in the case of the state, any county.

[*1974 c 479 s 5; 1975 c 401 s 5; 1976 c 239 s 4,5*]

15.167 PENALTIES. Any person who willfully violates the provisions of sections 15.162 to 15.1671 or any lawful rules and regulations promulgated thereunder is guilty of a misdemeanor. Willful violation of sections 15.162 to 15.1671 by any public employee constitutes just cause for suspension without pay or dismissal of the public employee.

[*1974 c 479 s 6; 1975 c 401 s 6; 1976 c 239 s 6*]

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Laws 1969, Chapter 1129 assigned and transferred shall be deemed and held to constitute a continuation of the former department or agency as to matters within the jurisdiction of the former department or agency, and not a new authority for the purpose of succession to all rights, powers, duties and obligations of the former department or agency as constituted at the time of such assignment or transfer except as otherwise provided by Laws 1969, Chapter 1129, with the same force and effect as if such functions, powers and duties had not been assigned or transferred.

[*For text of subds 2 to 6, see M.S.1978*]

[*1979 c 333 s 61*]

15.0411 Definitions.

[*For text of subd 1, see M.S.1978*]

Subd. 2. "Agency" means any state officer, board, commission, bureau, division, department, or tribunal, other than a court, having a statewide jurisdiction and authorized by law to make rules or to adjudicate contested cases. "Agency" also means the capitol area architectural and planning board. Sections 15.0411 to 15.052 do not apply to (a) agencies directly in the legislative or judicial branches, (b) emergency powers in sections 12.31 to 12.37, (c) corrections board, (d) the unemployment insurance program in the department of economic security, (e) the director of mediation services, (f) the workers' compensation division in the department of labor and industry, (g) the workers' compensation court of appeals, (h) board of pardons, or (i) the department of military affairs. Sections 15.0418 to 15.0426 do not apply to the Minnesota municipal board or the public employment relations board.

[*For text of subds 3 and 4, see M.S.1978*]

[*1979 c 50 s 2; 1979 c 332 art 1 s 8*]

15.065 Fiscal notes.

Notwithstanding any other law to the contrary, the departments of health, public welfare, economic security, corrections and the health related boards shall not put into effect any rule, regulation, or standard, which has a fiscal impact in excess of $100,000 annually without first providing the house appropriations and the senate finance committees with fiscal notes.

[*1979 c 336 s 15*]

15.1611 Government data.

Subdivision 1. All state agencies, political subdivisions and statewide systems shall be governed by sections 15.1611 to 15.1698.

Subd. 2. Sections 15.1611 to 15.1698 may be cited as the "Minnesota government data practices act."

[*1979 c 328 s 1*]

15.162 Collection, security and dissemination of records; definitions.

Subdivision 1. As used in sections 15.1611 to 15.1698, the terms defined in this section have the meanings given them.

[*For text of subds 1a and 2, see M.S.1978*]

Subd. 2a. "Confidential data on individuals" means data which is: (a) made not public by statute or federal law applicable to the data and is inaccessible to the individual subject of that data; or (b) collected by a civil or criminal investigative agency as part of an active investigation undertaken for the purpose of the commencement of a legal action, provided that the burden of proof as to whether such investigation is active

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or in anticipation of a legal action is upon the agency. Confidential data on individuals does not include arrest information that is reasonably contemporaneous with an arrest or incarceration. The provision of clause (b) shall terminate and cease to have force and effect with regard to the state agencies, political subdivisions, statewide systems, covered by the ruling, upon the granting or refusal to grant a temporary classification pursuant to section 15.1642 of both criminal and civil investigative data, or on July 31, 1980, whichever occurs first.

[For text of subds 3 to 5b, see M.S.1978]

Subd. 6. "Responsible authority" in a state agency or statewide system means the state official designated by law or by the commissioner as the individual responsible for the collection, use and dissemination of any set of data on individuals, government data, or summary data. "Responsible authority" in any political subdivision means the individual designated by the governing body of that political subdivision as the individual responsible for the collection, use, and dissemination of any set of data on individuals, government data, or summary data, unless otherwise provided by state law.

[For text of subds 7 to 9, see M.S.1978]

Subd. 10. "Designee" means any person designated by a responsible authority to be in charge of individual files or systems containing government data and to receive and comply with requests for government data.

Subd. 11. "Government data" means all data collected, created, received, maintained or disseminated by any state agency, political subdivision, or statewide system regardless of its physical form, storage media or conditions of use.

Subd. 12. "Person" means any individual, partnership, corporation, association, business trust, or a legal representative of an organization.

[*1979 c 328 s 2-6*]

15.1621 Access to government data.

Subdivision 1. **Public data.** All government data collected, created, received, maintained or disseminated by a state agency, political subdivision, or statewide system shall be public unless classified by statute, or temporary classification pursuant to section 15.1642, or federal law, as not public, or with respect to data on individuals, as private or confidential. The responsible authority in every state agency, political subdivision and statewide system shall keep records containing government data in such an arrangement and condition as to make them easily accessible for convenient use. Photographic, photostatic, microphotographic, or microfilmed records shall be considered as accessible for convenient use regardless of the size of such records.

Subd. 2. **Procedures.** The responsible authority in every state agency, political subdivision, and statewide system shall establish procedures, consistent with sections 15.-1611 to 15.1698, to insure that requests for government data are received and complied with in an appropriate and prompt manner. Full convenience and comprehensive accessibility shall be allowed to researchers including historians, genealogists and other scholars to carry out extensive research and complete copying of all records containing government data except as otherwise expressly provided by law.

A responsible authority may designate one or more designees.

Subd. 3. **Request for data.** Upon request to a responsible authority or designee, a person shall be permitted to inspect and copy government data at reasonable times and places, and if the person requests, he shall be informed of the data's meaning. The responsible authority or designee shall provide copies of government data upon request. The responsible authority may require the requesting person to pay the actual costs of making, certifying and compiling the copies. If the responsible authority or designee is not able to provide copies at the time a request is made he shall supply copies as soon as reasonably possible.

If the responsible authority or designee determines that the requested data is classified so as to deny the requesting person access, the responsible authority or designee

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shall so inform the requesting person orally at the time of the request, and in writing as soon thereafter as possible, and shall cite the statute, temporary classification, or federal law on which the determination is based.

[*1979 c 328 s 7*]

15.163 Duties of responsible authority.

Subdivision 1. **Annual inventory of records.** The responsible authority shall prepare a public document containing his name, title and address, and a description of each category of record, file, or process relating to private or confidential data on individuals maintained by his state agency, statewide system, or political subdivision. Forms used to collect private and confidential data shall be included in the public document. Beginning August 1, 1977 and annually thereafter, the responsible authority shall update the public document and make any changes necessary to maintain the accuracy of the document. The document shall be available from the responsible authority to the public in accordance with the provisions of sections 15.1621 and 15.17.

Subd. 2. **Copies to commissioner.** The commissioner may require responsible authorities to submit copies of the public document required in subdivision 1, and may request additional information relevant to data collection practices, policies and procedures.

Subd. 3. **Standards for collection and storage.** Collection and storage of public, private or confidential data on individuals and use and dissemination of private and confidential data on individuals shall be limited to that necessary for the administration and management of programs specifically authorized by the legislature, local governing body or mandated by the federal government.

Subd. 4. **Collection and use of data; general rule.** Private or confidential data on an individual shall not be collected, stored, used or disseminated by political subdivisions, statewide systems or state agencies for any purposes other than those stated to the individual at the time of collection in accordance with section 15.165, except as provided in this subdivision.

(a) Data collected prior to August 1, 1975, and which have not been treated as public data, may be used and disseminated for the purposes for which the data was originally collected or for purposes which are specifically approved by the commissioner as necessary to public health, safety, or welfare.

(b) Private or confidential data may be used and disseminated to individuals or agencies specifically authorized access to that data by state or federal law subsequent to the collection of the data.

(c) Private or confidential data may be used and disseminated to individuals or agencies subsequent to the collection of the data when specifically approved by the commissioner as necessary to carry out a function assigned by law.

(d) Private data may be used by and disseminated to any person or agency if the individual subject or subjects of the data have given their informed consent. Whether a data subject has given informed consent shall be determined by rules of the commissioner. Informed consent shall not be deemed to have been given by an individual subject of the data by the signing of any statement authorizing any person or agency to disclose information about him or her to an insurer or its authorized representative, unless the statement is:

(1) In plain language;

(2) Dated;

(3) Specific in designating the particular persons or agencies the data subject is authorizing to disclose information about him or her;

(4) Specific as to the nature of the information he or she is authorizing to be disclosed;

(5) Specific as to the persons or agencies to whom he or she is authorizing information to be disclosed;

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(6) Specific as to the purpose or purposes for which the information may be used by any of the parties named in clause (5), both at the time of the disclosure and at any time in the future;

(7) Specific as to its expiration date which should be within a reasonable period of time, not to exceed one year except in the case of authorizations given in connection with applications for life insurance or noncancelable or guaranteed renewable health insurance and identified as such, two years after the date of the policy.

Subd. 5. **Data protection.** The responsible authority shall (1) establish procedures to assure that all data on individuals is accurate, complete, and current for the purposes for which it was collected; and (2) establish appropriate security safeguards for all records containing data on individuals.

Subd. 6. **Contracts.** Except as provided in section 15.1691, subdivision 5, in any contract between a governmental unit subject to sections 15.1611 to 15.1698 and any person, when the contract requires that data on individuals be made available to the contracting parties by the governmental unit, that data shall be administered consistent with sections 15.1611 to 15.1698. A contracting party shall maintain the data on individuals which it received according to the statutory provisions applicable to the data.

Subd. 7. **Preparation of summary data.** The use of summary data derived from private or confidential data on individuals under the jurisdiction of one or more responsible authorities shall be permitted. Unless classified pursuant to section 15.1642, summary data is public. The responsible authority shall prepare summary data from private or confidential data on individuals upon the request of any person, provided that the request is in writing and the cost of preparing the summary data is borne by the requesting person. The responsible authority may delegate the power to prepare summary data (1) to the administrative officer responsible for any central repository of summary data; or (2) to a person outside of its agency if the person, in writing, sets forth his purpose and agrees not to disclose, and the agency reasonably determines that the access will not compromise private or confidential data on individuals.

Subd. 8. **Publication of access procedures.** The responsible authority shall prepare a public document setting forth in writing the rights of the data subject pursuant to section 15.165 and the specific procedures in effect in the state agency, statewide system or political subdivision for access by the data subject to public or private data on individuals.

Subd. 9. **Intergovernmental access of data.** A responsible authority shall allow another responsible authority access to data classified as not public only when the access is authorized or required by statute or federal law. An agency that supplies government data under this subdivision may require the requesting agency to pay the actual cost of supplying the data.

Data shall have the same classification in the hands of the agency receiving it as it had in the agency providing it.

[*1979 c 328 s 8*]

15.1641 [Repealed, 1979 c 328 s 24]

15.1642 Temporary classification.

Subdivision 1. **Application.** The responsible authority of a state agency, political subdivision or statewide system may apply to the commissioner for permission to classify data or types of data on individuals as private or confidential, or data not on individuals as non-public, for its own use and for the use of other similar agencies, political subdivisions or statewide systems on a temporary basis until a proposed statute can be acted upon by the legislature. The application for temporary classification is public.

Upon the filing of an application for temporary classification, the data which is the subject of the application shall be deemed to be classified as set forth in the application for a period of 45 days, or until the application is disapproved or granted by the commissioner, whichever is earlier.

Subd. 2. **Contents of application for private or confidential data.** An application for temporary classification of data on individuals shall include and the applicant

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shall have the burden of clearly establishing that no statute currently exists which either allows or forbids classification as private or confidential; and either

(a) That data similar to that for which the temporary classification is sought has been treated as either private or confidential by other state agencies or political subdivisions, and by the public; or

(b) That a compelling need exists for immediate temporary classification, which if not granted could adversely affect the public interest or the health, safety, well being or reputation of the data subject.

Subd. 2a. **Contents of application for non-public data.** An application for temporary classification of government data not on individuals shall include and the applicant shall have the burden of clearly establishing that no statute currently exists which either allows or forbids classification as non-public; and either

(a) That data similar to that for which the temporary classification is sought has been treated as non-public by other state agencies or political subdivisions, and by the public; or

(b) Public access to the data would render unworkable a program authorized by law; or

(c) That a compelling need exists for immediate temporary classification, which if not granted could adversely affect the health, safety or welfare of the public.

Subd. 3. **Determination.** The commissioner shall either grant or disapprove the application for temporary classification within 45 days after it is filed. If the commissioner disapproves the application, he shall set forth in detail his reasons for the disapproval, and shall include a statement of what classification he believes is appropriate for the data which is the subject of the application. Twenty days after the date of the commissioner's disapproval of an application, the data which is the subject of the application shall become public data, unless the responsible authority submits an amended application for temporary classification which requests the classification deemed appropriate by the commissioner in his statement of disapproval or which sets forth additional information relating to the original proposed classification. Upon the filing of an amended application, the data which is the subject of the amended application shall be deemed to be classified as set forth in the amended application for a period of 20 days or until the amended application is granted or disapproved by the commissioner, whichever is earlier. The commissioner shall either grant or disapprove the amended application within 20 days after it is filed. Five working days after the date of the commissioner's disapproval of the amended application, the data which is the subject of the application shall become public data. No more than one amended application may be submitted for any single file or system.

If the commissioner grants an application for temporary classification, it shall become effective immediately, and the complete record relating to the application shall be submitted to the attorney general, who shall review the classification as to form and legality. Within 25 days, the attorney general shall approve the classification, disapprove a classification as confidential but approve a classification as private, or disapprove the classification. If the attorney general disapproves a classification, the data which is the subject of the classification shall become public data five working days after the date of the attorney general's disapproval.

Subd. 4. [Repealed, 1979 c 328 s 24]

Subd. 5. **Expiration of temporary classification.** Emergency classifications granted before July 1, 1979 are redesignated as temporary classifications. All temporary classifications granted under this section prior to July 1, 1979 and still in effect shall expire on July 31, 1980. For purposes of this section, all temporary classifications granted prior to December 1, 1979, shall be treated as if they were granted in 1979.

Subd. 5a. **Legislative consideration and expiration of temporary classifications.** On or before January 15 of each year, the commissioner shall submit all temporary classifications granted in the prior year in bill form for legislative consideration. Unless enacted by law, each temporary classification so submitted shall expire 18 months after being granted and may not be renewed more than once.

[*1979 c 328 s 9-13*]

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15.166 Civil penalties.

Subdivision 1. Notwithstanding section 466.03, a political subdivision, responsible authority or state agency which violates any provision of sections 15.1611 to 15.1698 is liable to a person who suffers any damage as a result of the violation, and the person damaged may bring an action against the political subdivision, responsible authority, statewide system or state agency to cover any damages sustained, plus costs and reasonable attorney fees. In the case of a willful violation, the political subdivision, statewide system or state agency shall, in addition, be liable to exemplary damages of not less than $100, nor more than $10,000 for each violation. The state is deemed to have waived any immunity to a cause of action brought under sections 15.1611 to 15.1698.

Subd. 2. A political subdivision, responsible authority, statewide system or state agency which violates or proposes to violate sections 15.1611 to 15.1698 may be enjoined by the district court. The court may make any order or judgment as may be necessary to prevent the use or employment by any person of any practices which violate sections 15.1611 to 15.1698.

Subd. 3. An action filed pursuant to this section may be commenced in the county in which the individual alleging damage or seeking relief resides, or in the county wherein the political subdivision exists, or, in the case of the state, any county.

Subd. 4. In addition to the remedies provided in subdivisions 1 to 3 or any other law, any aggrieved person may bring an action in district court to compel compliance with sections 15.1611 to 15.1698 and may recover costs and disbursements, including reasonable attorney's fees, as determined by the court. If the court determines that a request for government data is frivolous and without merit and a basis in fact, it may award reasonable costs and attorney fees to the responsible authority. The matter shall be heard as soon as possible. In an action involving a request for government data under section 15.1621 or 15.165, the court may inspect in camera the government data in dispute, but shall conduct its hearing in public and in a manner that protects the security of data classified as not public.

[*1979 c 328 s 14*]

15.169 [Repealed, 1979 c 328 s 24]

15.1691 Welfare data.

Subdivision 1. **Definitions.** As used in this section:

(a) "Individual" means an individual pursuant to section 15.162, subdivision 4, but does not include a vendor of services.

(b) "Program" includes all programs for which authority is vested in a component of the welfare system pursuant to statute or federal law.

(c) "Welfare system" includes the department of public welfare, county welfare boards, human services boards, community mental health boards, state hospitals, state nursing homes, and persons, agencies, institutions, organizations and other entities under contract to any of the above agencies to the extent specified in the contract.

Subd. 2. **General.** Unless the data is summary data or a statute specifically provides a different classification, data on individuals collected, maintained, used or disseminated by the welfare system is private data on individuals, and shall not be disclosed except:

(a) Pursuant to section 15.163;

(b) Pursuant to a valid court order;

(c) Pursuant to a statute specifically authorizing access to the private data;

(d) To an agent of the welfare system, including appropriate law enforcement personnel, who are acting in the investigation, prosecution, criminal or civil proceeding relating to the administration of a program;

(e) To personnel of the welfare system who require the data to determine eligibility, amount of assistance, and the need to provide services of additional programs to the individual;

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(f) To administer federal funds or programs; or

(g) Between personnel of the welfare system working in the same program.

Subd. 3. **Investigative data.** Data collected, maintained, used or disseminated by the welfare system in an investigation, authorized by statute and relating to the enforcement of rules or law, is confidential pursuant to section 15.162, subdivision 2a, and shall not be disclosed except:

(a) Pursuant to section 15.163;

(b) Pursuant to statute or valid court order;

(c) To a party named in a civil or criminal proceeding, administrative or judicial, for preparation of defense.

After presentation in court, the data shall be public data on individuals to the extent reflected in court records.

Subd. 4. **Licensing data.** All data pertaining to persons licensed or registered under the authority of the commissioner of public welfare, except for personal and personal financial data submitted by applicants and licensees under the home day care program and the family foster care program, is public data. Personal and personal financial data on home day care program and family foster care program applicants and licensees is private data pursuant to section 15.162, subdivision 5a.

Subd. 5. **Medical data; contracts.** Data relating to the medical, psychiatric or mental health of any person, including diagnosis, progress charts, treatment received, case histories, and opinions of health care providers, which is collected, maintained, used or disseminated by a private health care provider under contract to any agency of the welfare system is private data on individuals, and is subject to the provisions of sections 15.162 to 15.1671, and this section, except that the provisions of section 15.165, subdivision 3, shall not apply. Access to medical data referred to in this subdivision by the individual who is the subject of the data is subject to the provisions of section 144.335.

Subd. 6. **Other data.** Data collected, used, maintained or disseminated by the welfare system that is not data on individuals is public pursuant to sections 15.1621 and 15.17.

[*1979 c 328 s 15*]

15.1692 Personnel data.

Subdivision 1. As used in this section, "personnel data" means data on individuals collected because the individual is or was an employee of or an applicant for employment by a state agency, statewide system or political subdivision.

Subd. 2. Except for employees described in subdivision 6, the following personnel data on current and former employees of a state agency, statewide system or political subdivision is public: name; actual gross salary; salary range; actual gross pension; the value and nature of employer paid fringe benefits; the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary; job title; job description; education and training background; previous work experience; date of first and last employment; the status of any complaints or charges against the employee, whether or not the complaint or charge resulted in a disciplinary action; and the final disposition of any disciplinary action and supporting documentation.

Subd. 3. Except for applicants described in subdivision 6, the following personnel data on current and former applicants for employment by a state agency, statewide system or political subdivision is public: veteran status; relevant test scores; rank on eligible list; job history; education and training; and work availability. Names of applicants shall be private data except when certified as eligible for appointment to a vacancy.

Subd. 4. Personnel examinations and answer keys are confidential, except pursuant to a valid court order.

Subd. 5. All other personnel data is private data on individuals, except pursuant to a valid court order.

Subd. 6. All personnel data maintained by any state agency, statewide system or political subdivision relating to an individual employed as or an applicant for employment as an undercover law enforcement officer is private data on individuals.

[*1979 c 328 s 17*]

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15.1693 Educational data.

Subdivision 1. As used in this section:

(a) "Educational data" means data on individuals maintained by a public educational agency or institution or by a person acting for the agency or institution which relates to a student.

Records of instructional personnel which are in the sole possession of the maker thereof and are not accessible or revealed to any other individual except a substitute teacher, and are destroyed at the end of the school year, shall not be deemed to be government data.

Records of a law enforcement unit of a public educational agency or institution which are maintained apart from education data and are maintained solely for law enforcement purposes, and are not disclosed to individuals other than law enforcement officials of the jurisidiction are confidential; provided, that education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

Records relating to a student who is employed by a public educational agency or institution which are made and maintained in the normal course of business, relate exclusively to the individual in that individual's capacity as an employee, and are not available for use for any other purpose are classified pursuant to section 15.1692.

(b) "Student" includes a person currently or formerly enrolled or registered, and applicants for enrollment or registration at a public educational agency or institution.

(c) "Substitute teacher" means an individual who performs on a temporary basis the duties of the individual who made the record, but does not include an individual who permanently succeeds the maker of the record in his position.

Subd. 2. Except as provided in subdivision 4, educational data is private data on individuals and shall not be disclosed except as follows:

(a) Pursuant to section 15.163;

(b) Pursuant to a valid court order;

(c) Pursuant to a statute specifically authorizing access to the private data;

(d) To disclose information in health and safety emergencies pursuant to the provisions of 20 U.S.C., Section 1232g(b)(1)(I) and 45 C.F.R., Section 99.36 which are in effect on July 1, 1979; or

(e) Pursuant to the provisions of 20 U.S.C., Sections 1232g(b)(1), (b)(4)(A), (b)(4)-(B), (b)(1)(B), (b)(3) and 45 C.F.R., Sections 99.31, 99.32, 99.33, 99.34 and 99.35 which are in effect on July 1, 1979.

Subd. 3. A student shall not have the right of access to private data provided in section 15.165, subdivision 3, as to financial records and statements of his parents or any information contained therein.

Subd. 4. Information designated as directory information pursuant to the provisions of 20 U.S.C., Section 1232g and regulations adopted pursuant thereto which are in effect on July 1, 1979 is public data on individuals.

[*1979 c 328 s 18*]

15.1694 Attorneys.

Notwithstanding the provisions of sections 15.162 to 15.17, the use, collection, storage, and dissemination of data by an attorney acting in his professional capacity for the state, a state agency or a political subdivision shall be governed by statutes, rules, and professional standards concerning discovery, production of documents, introduction of evidence, and professional responsibility; provided that this section shall not be construed to affect the applicability of any statute, other than sections 15.162 to 15.17, which specifically requires or prohibits disclosure of specific information by the attorney, nor shall this section be construed to relieve any responsible authority, other than the attorney, from his duties and responsibilities pursuant to sections 15.1611 to 15.17.

[*1979 c 328 s 19*]

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15.1695 Law enforcement data.

Subdivision 1. When collected, created, or maintained by law enforcement agencies including municipal police departments, county sheriff departments, the bureau of criminal apprehension, the Minnesota state patrol, the peace officers standards and training board, or public prosecutors or defenders:

(a) Data on participants in crime prevention programs including lists of property with identification numbers or evaluations or recommendations related to structural security against unauthorized entry is private; and

(b) Data contained on incident complaint reports, variously called logs or dockets, comprising a chronological record of events, shall be public; provided that data on individuals which could reasonably be used to determine the identity of an undercover agent, informant, or victim of criminal sexual conduct shall be private data on individuals; provided further that any other data classified by law as private or confidential contained in incident complaint reports shall remain private or confidential data.

Subd. 2. Nothing in this chapter shall prohibit the exchange of information by law enforcement agencies provided the exchanged information is pertinent and necessary to the requesting agency in initiating, furthering, or completing an investigation.

Subd. 3. Information reflecting deliberative processes or investigative techniques of law enforcement agencies is confidential; provided that information, reports, or memoranda which have been adopted as the final opinion or justification for decision of a law enforcement agency are public.

Subd. 4. Nothing in this section shall be held to expand or limit the scope of discovery available at law to any party in a civil, criminal, or administrative proceeding.

[*1979 c 328 s 20*]

15.1696 Data access for crime victims.

The prosecuting authority shall release investigative data collected by a law enforcement agency to the victim of a criminal act or his legal representative upon written request unless the prosecuting authority reasonably believes:

(a) That the release of that data will interfere with the investigation; or

(b) That the request is prompted by a desire on the part of the requestor to engage in unlawful activities.

[*1979 c 328 s 21*]

15.1697 Elected officials; correspondence; private data.

Correspondence between individuals and elected officials is private data on individuals, but may be made public by either the sender or the recipient.

[*1979 c 328 s 22*]

15.1698 Medical data.

Subdivision 1. **Definition.** As used in this section, "directory information" means name of the patient, date admitted, general condition, and date released.

Subd. 2. **Access to records.** Access to medical data in the possession of a political subdivision, state agency, or statewide system, by the individual who is the subject of the data is subject to the provisions of section 144.335.

Subd. 3. **Public hospitals; directory information.** If a person is a patient in a hospital operated by a state agency or political subdivision pursuant to legal commitment, directory information is public data. If a person is a patient other than pursuant to commitment in a hospital controlled by a state agency or political subdivision, directory information is public data unless the patient requests otherwise, in which case it is private data on individuals.

Directory information about an emergency patient who is unable to communicate which is public under this subdivision shall not be released until a reasonable effort is made to notify the next of kin. Although an individual has requested that directory in-

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formation be private, the hospital may release directory information to a law enforcement agency pursuant to a lawful investigation pertaining to that individual.

[*1979 c 328 s 16*]

15.17 Official records.

[*For text of subds 1 to 3, see M.S.1978*]

Subd. 4. **Accessible to public.** Access to records containing government data is governed by section 15.1621.

[*1979 c 328 s 23*]

15.191 Imprest cash funds.

Subdivision 1. **Emergency disbursements.** Imprest cash funds for the purpose of making minor disbursements, providing for change, and providing employees with a portion or all of their payroll warrant where the warrant has not been received through the payroll system, may be established by state departments or agencies from existing appropriations in the manner prescribed by this section.

[*For text of subds 2 and 3, see M.S.1978*]

[*1979 c 333 s 52*]

15.62 Athletic leave of absence.

[*For text of subds 1 and 2, see M.S.1978*]

Subd. 3. If the public employee granted the leave is an employee of a school district, university system or other political subdivision, the state shall reimburse the employer for the actual cost to the employer of employing a substitute.

[*1979 c 208 s 1*]

CHAPTER 15A. STATE AND OTHER PUBLIC OFFICERS AND EMPLOYEES, COMPENSATION AND ALLOWANCES

Sec.
15A.081 Salaries and salary ranges for certain employees.
15A.083 Salaries for positions in the judicial branch.
15A.13 Other terms and conditions of employment.

15A.081 Salaries and salary ranges for certain employees.

Subdivision 1. The following salaries or salary ranges are provided for the below listed employees in the executive branch of government:

	Salary or Range Effective July 1, 1979	Effective July 1, 1980
Administration, department of commissioner	$44,000	$47,000
Agriculture, department of commissioner	38,000	40,000
Commerce, department of commissioner of banks	34,000	36,500

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GOVERNMENT DATA—PRIVACY

CHAPTER 603

H.F.No.2040

An Act relating to privacy; providing for the collection and dissemination of government data; classifying data as private, confidential, nonpublic or public; amending Minnesota Statutes 1978, Sections 15.162, Subdivision 3, and by adding subdivisions; 15.165, Subdivision 3; 600.23, Subdivision 3; and Chapter 15, by adding sections; Minnesota Statutes, 1979 Supplement, Sections 15.162, Subdivision 2a; 15.1621, by adding a subdivision; 15.1642, Subdivisions 1, 3, 5a, and by adding a subdivision; 15.166, Subdivision 4; 15.1691, Subdivision 3; 15.1692, Subdivisions 1 and 2; 15.1693, Subdivision 2; and 15.1698, Subdivision 1, and by adding a subdivision; and Laws 1978, Chapter 790, Section 5, Subdivision 2; repealing Minnesota Statutes, 1979 Supplement, Section 15.1692, Subdivision 4; and 15.1698, Subdivision 2.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes, 1979 Supplement, Section 15.162, Subdivision 2a, is amended to read:

Subd. 2a. "Confidential data on individuals" means data which is: (a) made not public by statute or federal law applicable to the data and is inaccessible to the individual subject of that data; or (b) collected by a civil or criminal investigative agency as part of an active investigation undertaken for the purpose of the commencement of a legal action, provided that the burden of proof as to whether such investigation is active or in anticipation of a legal action is upon the agency. Confidential data on individuals does not include arrest information that is reasonably contemporaneous with an arrest or incarceration. The provision of clause (b) shall terminate and cease to have force and effect with regard to the state agencies, political subdivisions, statewide systems, covered by the ruling, upon the granting or refusal to grant a temporary classification pursuant to section 15.1642 of both criminal and civil investigative data, or on July 31, 1981, whichever occurs first.

Sec. 2. Minnesota Statutes 1978, Section 15.162, Subdivision 3, is amended to read:

Subd. 3. "Data on individuals" means all government data in which any individual, living or dead, is or can be identified as the subject of that data, unless the appearance of the name or other identifying data can be clearly demonstrated to be only incidental to the data and the data are not accessed by the name or other identifying data of any individual.

Sec. 3. Minnesota Statutes 1978, Section 15.162, is amended by adding a subdivision to read:

Subd. 3a. "Data not on individuals" means all government data which is not data on individuals.

Sec. 4. Minnesota Statutes 1978, Section 15.162, is amended by adding a subdivision to read:

Subd. 5c. "Non-public data" means data not on individuals which is made by statute or federal law applicable to the data: (a) not public; and (b) accessible to the subject of the data.

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Sec. 5. Minnesota Statutes 1978, Section 15.162, amended by adding a subdivision to read:

Subd. 5d. "Protected non-public data" means data not on individuals which is made by statute or federal law applicable to the data (a) not public and (b) not accessible to the subject of the data.

Sec. 6. Minnesota Statutes 1978, Section 15.162, is amended by adding a subdivision to read:

Subd. 5e. "Public data not on individuals" means data which is accessible to the public pursuant to section 15.1621.

Sec. 7. Minnesota Statutes, 1979 Supplement, Section 15.1621, is amended by adding a subdivision to read:

Subd. 4. The classification of data in the possession of an agency shall change if it is required to do so to comply with either judicial or administrative rules pertaining to the conduct of legal actions or with a specific statute applicable to the data in the possession of the disseminating or receiving agency.

Sec. 8. Minnesota Statutes, 1979 Supplement, Section 15.1642, Subdivision 1, is amended to read:

15.1642 Temporary classification

Subdivision 1. Application. Notwithstanding the provisions of section 15.1621, the responsible authority of a state agency, political subdivision or statewide system may apply to the commissioner for permission to classify data or types of data on individuals as private or confidential, or data not on individuals as non-public or protected non-public, for its own use and for the use of other similar agencies, political subdivisions or statewide systems on a temporary basis until a proposed statute can be acted upon by the legislature. The application for temporary classification is public.

Upon the filing of an application for temporary classification, the data which is the subject of the application shall be deemed to be classified as set forth in the application for a period of 45 days, or until the application is disapproved or granted by the commissioner, whichever is earlier.

Sec. 9. Minnesota Statutes, 1979 Supplement, Section 15.1642, is amended by adding a subdivision to read:

Subd. 2b. If the commissioner determines that an application for temporary classification involves data which would reasonably be classified in the same manner by all agencies, political subdivisions, or statewide systems similar to the one which made the application, the commissioner may approve or disapprove the classification for data of the kind which is the subject of the application for the use of all agencies, political subdivisions, or statewide systems similar to the applicant. If the commissioner deems this approach advisable, he shall provide notice of his intention by publication in the state register and by notification to the intergovernmental information systems advisory council, within ten days of receiving the application. Within 30 days after publication in the state register and notification to the council, an affected agency, political subdivision, the public, or statewide system may submit comments on the commissioner's proposal. The commissioner shall consider any comments received when granting or denying a classification for data of the kind which is the subject of the application, for the use of all agencies, political subdivisions, or statewide systems similar to the applicant. Within 45 days after the close of the period for submitting comment, the commissioner shall grant or disapprove the application. Applications processed under this subdivision shall be either approved or disapproved by the commissioner within 90 days of the receipt of the application. For purposes of subdivision 1, the data which is the subject of the classification shall be deemed to be classified as set forth in the application for a period of 90 days, or until the ap-

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plication is disapproved or granted by the commissioner, whichever is earlier. If requested in the application, or determined to be necessary by the commissioner, the data in the application shall be so classified for all agencies, political subdivisions, or statewide systems similar to the applicant until the application is disapproved or granted by the commissioner, whichever is earlier. Proceedings after the grant or disapproval shall be governed by the provisions of subdivision 3.

Sec. 10. Minnesota Statutes, 1979 Supplement, Section 15.1642, Subdivision 5, is amended to read:

Subd. 5. Expiration of temporary classification. Emergency classifications granted before July 1, 1979 are redesignated as temporary classifications. All temporary classifications granted under this section prior to April 24, 1980, and still in effect, and all temporary classifications thereafter applied for and granted pursuant to this section shall expire on July 31, 1981 or 18 months after the classification is granted, whichever occurs later.

Sec. 11. Minnesota Statutes, 1979 Supplement, Section 15.1642, Subdivision 5a, is amended to read:

Subd. 5a. Legislative consideration and expiration of temporary classifications. On or before January 15 of each year, the commissioner shall submit all temporary classifications in effect on January 1 in bill form to the legislature.

Sec. 12. Minnesota Statutes 1978, Section 15.165, Subdivision 3, is amended to read:

Subd. 3. Upon request to a responsible authority, an individual shall be informed whether he is the subject of stored data on individuals, and whether it is classified as public, private or confidential. Upon his further request, an individual who is the subject of stored private or public data on individuals shall be shown the data without any charge to him and, if he desires, shall be informed of the content and meaning of that data. After an individual has been shown the private or public data and informed of its meaning, the data need not be disclosed to him for six months thereafter unless a dispute or action pursuant to this section is pending or additional data on the individual has been collected or created. The responsible authority shall provide copies of the private or public data upon request by the individual subject of the data. The responsible authority may require the requesting person to pay the actual costs of making, certifying, and compiling the copies.

The responsible authority shall comply immediately, if possible, with any request made pursuant to this subdivision, or within five days of the date of the request, excluding Saturdays, Sundays and legal holidays, if immediate compliance is not possible. If he cannot comply with the request within that time, he shall so inform the individual, and may have an additional five days within which to comply with the request, excluding Saturdays, Sundays and legal holidays.

Sec. 13. Minnesota Statutes, 1979 Supplement, Section 15.166, Subdivision 4, is amended to read:

Subd. 4. In addition to the remedies provided in subdivisions 1 to 3 or any other law, any aggrieved person may bring an action in district court to compel compliance with sections 15.1611 to 15.1698 and may recover costs and disbursements, including reasonable attorney's fees, as determined by the court. If the court determines that an action brought under this subdivision is frivolous and without merit and a basis in fact, it may award reasonable costs and attorney fees to the responsible authority. The matter shall be heard as soon as possible. In an action involving a request for government data under section 15.1621 or 15.165, the court may inspect in camera the government data in dispute, but shall conduct its hearing in

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public and in a manner that protects the security of data classified as not public.

Sec. 14. Minnesota Statutes 1978, Chapter 15, is amended by adding a section to read:

15.1672 Examination data

Data consisting solely of testing or examination materials, or scoring keys used solely to determine individual qualifications for appointment or promotion in public service, or used to administer a licensing examination, or academic examination, the disclosure of which would compromise the objectivity or fairness of the testing or examination process are classified as nonpublic, except pursuant to court order.

Sec. 15. Minnesota Statutes 1978, Chapter 15, is amended by adding a section to read:

15.1673 General nonpublic data

Subdivision 1. As used in this section, the following terms have the meanings given them.

(a) "Security information" means government data the disclosure of which would be likely to substantially jeopardize the security of information, possessions, individuals or property against theft, tampering, improper use, attempted escape, illegal disclosure, trespass, or physical injury.

(b) "Trade secret information" means government data, including a formula, pattern, compilation, program, device, method, technique or process (1) that was supplied by the affected individual or organization, (2) that is the subject of efforts by the individual or organization that are reasonable under the circumstances to maintain its secrecy, and (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

(c) "Labor relations information" means management positions on economic and non-economic items that have not been presented during the collective bargaining process or interest arbitration, including information specifically collected or created to prepare the management position.

Subd. 2. The following government data is classified as nonpublic data with regard to data not on individuals, pursuant to section 15.162, subdivision 5c, and as private data with regard to data on individuals, pursuant to section 15.162, subdivision 5a: Security information, trade secret information, sealed absentee ballots prior to opening by an election judge, sealed bids prior to the opening of the bid, and labor relations information.

Sec. 16. Minnesota Statutes 1978, Chapter 15, is amended by adding a section to read:

15.1674 Deferred assessment data

Any data, collected by political subdivisions pursuant to section 435.193, which indicate the amount or location of cash or other valuables kept in the homes of applicants for deferred assessment, are private data pursuant to section 15.162, subdivision 5a.

Sec. 17. Minnesota Statutes 1978, Chapter 15, is amended by adding a section to read:

15.1675 Revenue data

The following data created, collected and maintained by the state department of revenue are classified as protected non-public, pursuant to section 5: criteria used in the computer processing of income tax returns to determine which returns are selected for audit; department criteria used to determine which income tax returns are selected for an in-depth audit; and department criteria and procedures for determining which accounts receivable balances below a specified amount are cancelled or written-off.

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Sec. 18. Minnesota Statutes 1978, Chapter 15, is amended by adding a section to read:

15.1676 Surplus line insurance data

All data appearing on copies of surplus line insurance policies collected by the insurance division of the department of commerce pursuant to section 60A.20 are classified as private, pursuant to section 15.162, subdivision 5a.

Sec. 19. Minnesota Statutes 1978, Chapter 15, is amended by adding a section to read:

15.1677 Federal contracts data

To the extent that a federal agency requires it as a condition for contracting with a state agency or political subdivision, all government data collected and maintained by the state agency or political subdivision because that agency contracts with the federal agency are classified as either private or nonpublic depending on whether the data are data on individuals or data not on individuals.

Sec. 20. Minnesota Statutes 1978, Chapter 15, is amended by adding a section to read:

15.1678 Property complaint data

The names of individuals who register complaints with state agencies or political subdivisions concerning violations of state laws or local ordinances concerning the use of property are classified as confidential, pursuant to section 15.162, subdivision 2a.

Sec. 21. Minnesota Statutes 1978, Chapter 15, is amended by adding a section to read:

15.1679 Library data

Subdivision 1. All records collected, maintained, used or disseminated by a public library shall be administered in accordance with the provisions of sections 15.1611 to 15.17.

Subd. 2. That portion of records maintained by a public library which links a library patron's name with materials requested or borrowed by the patron or which links a patron's name with a specific subject about which the patron has requested information or materials is classified as private, pursuant to section 15.162, subdivision 5a, and shall not be disclosed except pursuant to a valid court order.

Sec. 22. Minnesota Statutes 1978, Chapter 15, is amended by adding a section to read:

15.1681 Investigative detention data

Subdivision 1. Definition. As used in this section, "investigative detention data" means government data created, collected, used or maintained by the state reformatories, prisons and correctional facilities, municipal or county jails, lockups, work houses, work farms and other correctional and detention facilities which: (a) if revealed, would disclose the identity of an informant who provided information about suspected illegal activities, and (b) if revealed, is likely to subject the informant to physical reprisals by others.

Subd. 2. General. Investigative detention data is confidential and shall not be disclosed except:

(a) Pursuant to section 15.163 or any other statute;

(b) Pursuant to a valid court order; or

(c) To a party named in a civil or criminal proceeding, whether administrative or judicial, to the extent required by the relevant rules of civil or criminal procedure.

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Sec. 23. Minnesota Statutes, 1979 Supplement, Section 15.1691, Subdivision 3, is amended to read:

Subd. 3. **Investigative data.** Data on persons including data on vendors of services, which is collected, maintained, used or disseminated by the welfare system in an investigation, authorized by statute and relating to the enforcement of rules or law, is confidential pursuant to section 15.162, subdivision 2a, and shall not be disclosed except:

(a) Pursuant to section 15.163;

(b) Pursuant to statute or valid court order;

(c) To a party named in a civil or criminal proceeding, administrative or judicial, for preparation of defense.

The data referred to in this subdivision shall be classified as public data upon its submission to a hearing examiner or court in an administrative or judicial proceeding.

Sec. 24. Minnesota Statutes, 1979 Supplement, Section 15.1692, Subdivision 1, is amended to read:

15.1692 Personnel data

Subdivision 1. As used in this section, "personnel data" means data on individuals collected because the individual is or was an employee of or an applicant for employment by, performs services on a voluntary basis for, or acts as an independent contractor with a state agency, statewide system or political subdivision or is a member of an advisory board or commission.

Sec. 25. Minnesota Statutes, 1979 Supplement, Section 15.1692, Subdivision 2, is amended to read:

Subd. 2. Except for employees described in subdivision 6, the following personnel data on current and former employees, volunteers and independent contractors of a state agency, statewide system or political subdivision and members of advisory boards or commissions is public: name; actual gross salary; salary range; contract fees; actual gross pension; the value and nature of employee paid fringe benefits; the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary; job title; job description; education and training background; previous work experience; date of first and last employment; the status of any complaints or charges against the employee, whether or not the complaint or charge resulted in a disciplinary action; and the final disposition of any disciplinary action and supporting documentation; work location; a work telephone number; badge number; and, city and county of residence.

Sec. 26. Minnesota Statutes, 1979 Supplement, Section 15.1693, Subdivision 2, is amended to read:

Subd. 2. Except as provided in subdivision 4, educational data is private data on individuals and shall not be disclosed except as follows:

(a) Pursuant to section 15.163;

(b) Pursuant to a valid court order;

(c) Pursuant to a statute specifically authorizing access to the private data;

(d) To disclose information in health and safety emergencies pursuant to the provisions of 20 U.S.C., Section 1232g(b)(1)(I) and 45 C.F.R., Section 99.36 which are in effect on July 1, 1979; or

(e) Pursuant to the provisions of 20 U.S.C., Sections 1232g(b)(1), (b)(4)(A), (b)(4)(B), (b)(1)(B), (b)(3) and 45 C.F.R., Sections 99.31, 99.32, 99.33, 99.34 and 99.35 which are in effect on July 1, 1979; or

(f) To appropriate health authorities but only to the extent necessary to administer immunization programs.

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Sec. 27. Minnesota Statutes, 1979 Supplement, Section 15.1698, Subdivision 1, is amended to read:

15.1698 Medical data

Subdivision 1. Definition. As used in this section: (a) "Directory information" means name of the patient, date admitted, general condition, and date released.

(b) "Medical data" means data collected because an individual was or is a patient or client of a hospital, nursing home, medical center, clinic, health or nursing agency operated by a state agency or political subdivision including business and financial records, and data provided by or about relatives of the individual.

Sec. 28. Minnesota Statutes, 1979 Supplement, Section 15.1698, is amended by adding a subdivision to read:

Subd. 4. Classification of medical data. Unless the data is summary data or a statute specifically provides a different classification, medical data are private but are available only to the subject of the data as provided in section 144.335, and shall not be disclosed to others except:

(a) Pursuant to section 15.163;

(b) Pursuant to a valid court order;

(c) To administer federal funds or programs;

(d) To the surviving spouse or next of kin of a deceased patient or client;

(e) To communicate a patient's or client's condition to a family member or other appropriate person in accordance with acceptable medical practice, unless the patient or client directs otherwise; or

(f) As otherwise required by law.

Sec. 29. Minnesota Statutes 1978, Chapter 15, is amended by adding a section to read:

15.1699 Employee assistance data

All data created, collected or maintained by the department of administration to administer the employee assistance program are classified as private, pursuant to section 15.162, subdivision 5a.

Sec. 30. Minnesota Statutes 1978, Section 600.23, Subdivision 3, is amended to read:

Subd. 3. Withdrawal. Papers and instruments so deposited shall not be made public or withdrawn from the office except upon the written order of the person depositing the same, or his executors or administrators, or on the order of some court for the purpose of being read in the court, and then to be returned to the office.

Sec. 31. Laws 1978, Chapter 790, Section 5, Subdivision 2, is amended to read:

Subd. 2. Section 3 is effective April 1, 1981.

Sec. 32. **Repealer.** Minnesota Statutes, 1979 Supplement, Sections 15.1692, Subdivision 4, and 15.1698, Subdivision 2, are repealed.

Sec. 33. **Effective date.** This act is effective the day following enactment.

Approved April 23, 1980.

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152.18 Discharge and dismissal

Subdivision 1. If any person is found guilty of a violation of section 152.09, subdivision 1, clause (2) after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him on probation upon such reasonable conditions as it may require and for a period, not to exceed the maximum term of imprisonment provided for such violation. The court may give the person the opportunity to attend and participate in an appropriate program of education regarding the nature and effects of alcohol and drug abuse as a stipulation of probation. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against such person and discharge him from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of his probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal hereunder shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the department of public safety solely for the purpose of use by the courts in determining the merits of subsequent proceedings against such person. The court shall forward a record of any discharge and dismissal hereunder to the department of public safety who shall make and maintain the nonpublic record thereof as hereinbefore provided. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or for any other purpose.

Subd. 2. Upon the dismissal of such person and discharge of the proceedings against him pursuant to subdivision 1, such person may apply to the district court in which the trial was had for an order to expunge from all official records, other than the nonpublic record retained by the department of public safety pursuant to subdivision 1, all recordation relating to arrest, indictment or information, trial and dismissal and discharge pursuant to subdivision 1. If the court determines, after hearing, that such person was discharged and the proceedings against him dismissed, it shall enter such order. The effect of the order shall be to restore the person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made for him for any purpose.

Subd. 3. Any person who has been found guilty of a violation of section 152.09 with respect to a small amount of marijuana which violation occurred prior to April 11, 1976, and whose conviction would have been a petty misdemeanor under the provisions of section 152.15, subdivision 2, clause (5) in effect on April 11, 1978, but whose conviction was for an offense more serious than a petty misdemeanor under laws in effect prior to April 11, 1976, may petition the court in which he was convicted to expunge from all official records, other than the nonpublic record retained by the department of public safety pursuant to section 152.15, subdivision 2, clause (5), all recordation relating to his arrest, indictment or information, trial and conviction of an offense more serious than a petty misdemeanor. The court, upon being satisfied that a small amount was involved in the conviction, shall order all the recordation expunged. No person as to whom an order has been entered pursuant to this subdivision shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge conviction of an offense greater than a petty misdemeanor, unless possession of marijuana is material to a proceeding. Laws 1971, c. 937, § 18, eff. June 8, 1971. Amended by Laws 1973, c. 693, 14; Laws 1978, c. 639, § 1, eff. April 11, 1978.

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1973 Amendment. Deleted "who has not previously been convicted of a violation of any law of this state or of the United States relating to controlled substances" following "If any person" in the first sentence, inserted the second sentence relating to participation in an alcohol and drug abuse education program, and deleted the former concluding sentence which read: "Discharge and dismissal hereunder may occur only once with respect to any person.", in subd. 1.

1978 Amendment. Added subd. 3.

Law Review Commentaries

Criminal procedure: Expungement of arrest records. 1976, 62 Minn.Law Review 229.

Library references

Criminal Law ⇐982.1 et seq.
C.J.S. Criminal Law §§ 1571, 1618.

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Validity 1

1. Validity

The narcotics statute does not violate constitutional provision prohibiting laws embracing more than one subject. State v. Dick, 1977, 253 N.W.2d 277.

2. In general

Where defendant was found guilty of possession of controlled substance and trial court deferred imposition of sentence and without entering judgment of guilty placed him on probation for three years after which defendant filed notice of appeal and which proceedings against him were dismissed, defendant's appeal was not rendered moot because of his discharge from probation without adjudication of guilt. State v. Goodrich, 1977, 256 N.W.2d 506.

This section providing that a nonpublic record of defendant's discharge and dismissal of charge of possession of controlled substance without an adjudication of guilt shall be retained for sole purpose of determining merits of subsequent proceedings against such person contemplates use of record should defendant have further difficulties with the law. Id.

* * * * *

242.31 Restoration of civil rights

Subdivision 1. Whenever a person who has been committed to the commissioner of corrections upon conviction of a crime following reference for prosecution under the provisions of section 260.125 is finally discharged from his control by order of the Minnesota corrections board, that discharge shall restore that person to all civil rights and, if so ordered by the Minnesota corrections board, also shall have the effect of setting aside the conviction, nullifying the same and of purging that person thereof. The Minnesota corrections board shall file a copy of the order with the district court of the county in which the conviction occurred, whereupon the court shall order the conviction set aside.

Subd. 2. Whenever a person described in subdivision 1 has been placed on probation by the court pursuant to section 609.135 and, after satisfactory fulfillment thereof, is discharged from probation, the court shall issue an order of discharge pursuant to section 609.165. On application of the defendant or on its own motion and after notice to the county attorney, the court in its discretion may also order that the defendant's conviction be set aside with the same effect as such an order under subdivision 1.

These orders restore the defendant to his civil rights and purge and free the defendant from all penalties and disabilities arising from his conviction and it shall not thereafter be used against him, except in a criminal prosecution for a subsequent offense if otherwise admissible therein.

Subd. 3. The Minnesota corrections board shall file a copy thereof with the district court of the county in which the conviction occurred, whereupon the court shall order the conviction set aside and all records pertinent to the conviction sealed. These records shall only be reopened in the case of a judicial criminal proceeding thereafter instituted.

The term "records" shall include but is not limited to all matters, files, documents and papers incident to the arrest, indictment, information, complaint, trial, appeal, dismissal and discharge, which relate to the conviction for which the order was issued.

Amended by Laws 1973, c. 654, § 15; Laws 1975, c. 271, § 6; Laws 1977, c. 392, § 5.

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1973 Amendment. Laws 1973, c. 654, § 15, contained the general authority to make changes in terminology in order to record the functions, powers and duties of the Minnesota corrections authority.

1975 Amendment. Changed title of Minnesota corrections authority to corrections board.

1977 Amendment. Revised this section which formerly read:

"Whenever a person committed to the board upon conviction of a crime is discharged from its control other than by expiration of the maximum term of commitment as provided in this chapter, or by termination of its control under the provisions of section 242.27, such discharge shall, when so ordered by the board, restore such person to all civil rights and shall have the effect of setting aside the conviction and nullifying the same and of purging such person thereof. The board shall file a copy of the order with the district court of the county in which the conviction occurred, whereupon the court shall order the conviction set aside.

"Whenever a person has been placed on probation by the court pursuant to section 242.13 and, after satisfactory fulfillment thereof, is discharged therefrom, the court, on application of the defendant or on its own motion and after notice to the county attorney, in its discretion may likewise so order.

"Such orders restore the defendant to his civil rights and purge and free him from all penalties and disabilities arising from such conviction and it shall not thereafter be used against him, except in a criminal prosecution for a subsequent offense if otherwise admissible therein."

Cross References

Impeachment by evidence of conviction of crime, see Evid.Rule 609.

Law Review Commentaries

Criminal procedure: Expungement of arrest records. 1976, 62 Minn.Law Review 229.

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3.31 Authorizes to Govt. Non-Criminal Justice Agencies	44-5-214 44-5-301 to 303			X X
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3.33 Prohibits to Criminal Justice Agencies				
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3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	44-5-214			X
5. Right to Challenge	44-5-215			X
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information	44-5-212			X
8. Purging Conviction Information	44-5-212			X

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information	44-5-202(8)			X
10. Sealing Conviction Information				
11. Removal of Disqualifications				
12. Right to State Non-Existence of Record				
13. Research Access	44-5-304			X
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	44-5-202 44-5-213			X X
14.2 Auditing Requirements				
14.3 Other Accuracy/Completeness Requirements	44-5-213(5); 44-5-213(6) 44-5-215			X X
15. Dedication				
16. Civil Remedies	44-5-205			X
17. Criminal Penalties				
18. Public Records	2-6-101			X
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination	44-5-404(2)			X
22. Security				
22.1 Physical (Building) Security	44-5-401, 404			X
22.2 Administrative Security	44-5-403 44-5-405			X X
22.3 Computer Security	44-5-402 to 403			X
23. Transaction Logs	44-5-215 44-5-305 44-5-404(3)			X X X
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)				
27. FOIA (Excluding CJI)				
28. Central State Repository	44-5-213			X

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Montana Revised Codes Annotated
Title 44

CHAPTER 5

CRIMINAL JUSTICE INFORMATION

Part 1 — General Provisions

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44-5-101. Short title.
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-211. Records — form, contents, limits on use.
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Part 3 — Dissemination

-301. Dissemination of public criminal justice information.
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-303. Dissemination of confidential criminal justice information.
-304. Development of statistical information — agreements as to access.
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-401. Criminal justice information system security.
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-403. Computer programming.
-404. Manual equipment.
-405. Personnel.

Part 1
General Provisions

4-5-101. Short title. This chapter may be cited as the "Montana minal Justice Information Act of 1979".

istory: En. Sec. 1, Ch. 525, L. 1979.

npiler's Comments

wing clause. Sec. 25, Ch. 525, L. 1979, pro- d: "This act does not affect rights and es that matured, penalties that were incur red, or proceedings that were begun before the effective date of this act."

Severability. Sec. 26, Ch. 525, L. 1979, was a severability section.

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:4-5-102. Purpose. The purpose of this chapter is to require the otographing and fingerprinting of persons under certain circumstances, to ure the accuracy and completeness of criminal history information, and to ablish effective protection of individual privacy in criminal justice information recordkeeping.

istory: En. Sec. 2, Ch. 525, L. 1979.

:4-5-103. Definitions. As used in this chapter, the following definis apply:

1) "Access" means the ability to read, change, copy, use, transfer, or disinate criminal justice information maintained by criminal justice agencies.

2) "Administration of criminal justice" means the performance of any of following activities: detection, apprehension, detention, pretrial release, ttrial release, prosecution, adjudication, correctional supervision, or rehatation of accused persons or criminal offenders. It includes criminal idencation activities [illegible] he collection, storr and dissemination of criminal tice information.

(3) "Confidential criminal justice information" means:

(a) criminal investigative information;

(b) criminal intelligence information;

(c) fingerprints and photographs;

(d) criminal justice information or records made confidential by law; and

(e) any other criminal justice information not clearly defined as public criminal justice information.

(4) (a) "Criminal history record information" means information about individuals collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the filing of complaints, indictments, or informations and dispositions arising therefrom; sentences; correctional status; and release. It includes identification information, such as fingerprint records or photographs, unless such information is obtained for purposes other than the administration of criminal justice.

(b) Criminal history record information does not include:

(i) records of traffic offenses maintained by the division of motor vehicles, department of justice; or

(ii) court records.

(5) (a) "Criminal intelligence information" means information associated with an identifiable individual, group, organization, or event compiled by a criminal justice agency:

(i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting potential criminal operation, or producing an estimate of future major criminal activities; or

(ii) in relation to the reliability of information including information derived from reports of informants or investigators or from any type of surveillance.

(b) Criminal intelligence information does not include information relating to political surveillance or criminal investigative information.

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(6) "Criminal investigative information" means information associated with an individual, group, organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a crime or crimes. It includes information about a crime or crimes derived from reports of informants or investigators or from any type of surveillance. It does not include criminal intelligence information.

(7) "Criminal justice agency" means:

(a) any court with criminal jurisdiction;

(b) any state or local government agency designated by statute or by a governor's executive order to perform as its principal function the administration of criminal justice; or

(c) any local government agency not included under subsection (7)(b) that performs as its principal function the administration of criminal justice pursuant to an ordinance or local executive order.

(8) "Criminal justice information" means information relating to criminal justice collected, processed, or preserved by a criminal justice agency. It does not include the administrative records of a criminal justice agency.

(9) "Criminal justice information system" means a system, automated or manual, operated by federal, regional, state, or local governmental or governmental organizations for collecting, processing, preserving, or disseminating criminal justice information. It includes equipment, facilities, procedures, and agreements.

(10) (a) "Disposition" means information disclosing that criminal proceedings against an individual have terminated and describing the nature of the termination or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to bring charges or criminal proceedings have been concluded, abandoned, or indefinitely postponed.

(b) Particular dispositions include but are not limited to:

(i) conviction at trial or on a plea of guilty;

(ii) acquittal;

(iii) acquittal by reason of mental disease or defect;

(iv) acquittal by reason of mental incompetence;

(v) the sentence imposed, including all conditions attached thereto by the sentencing judge;

(vi) deferred imposition of sentence with any conditions of deferral;

(vii) nolle prosequi;

(viii) nolo contendere plea;

(ix) deferred prosecution or diversion;

(x) bond forfeiture;

(xi) death;

(xii) release as a result of a successful collateral attack;

(xiii) dismissal of criminal proceedings by the court with or without the commencement of a civil action for determination of mental incompetence or mental illness;

(xiv) a finding of civil incompetence or mental illness;

(xv) exercise of executive clemency;

(xvi) correctional placement on probation or parole or release; or

(xvii) revocation of probation or parole.

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(c) A single arrest of an individual may result in more than one disposition.

(11) "Dissemination" means the communication or transfer of criminal justice information to individuals or agencies other than the criminal justice agency that maintains such information. It includes confirmation of the existence or nonexistence of criminal justice information.

(12) "Public criminal justice information" means information, except confidential criminal justice information:

(a) made public by law;

(b) of court records and proceedings;

(c) of convictions, deferred sentences, and deferred prosecutions;

(d) of postconviction proceedings and status;

(e) originated by a criminal justice agency, including:

(i) initial offense reports;

(ii) initial arrest records;

(iii) bail records; and

(iv) daily jail occupancy rosters;

(f) considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or

(g) statistical information.

(13) "State repository" means the recordkeeping systems maintained by the department of justice pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and disseminated.

(14) "Statistical information" means data derived from records in which individuals are not identified or identification is deleted and from which neither individual identity nor any other unique characteristic that could identify an individual is ascertainable.

History: En. Sec. 3, Ch. 525, L. 1979.

44-5-104. Relationship to other statutes. Laws requiring disclosure of public records, writings, or information are not superseded by this chapter unless clearly inconsistent with its specific language. Laws requiring confidentiality of information contained in records or writings are not superseded by this chapter, which applies only when information may be disclosed consistent with such laws.

History: En. Sec. 4, Ch. 525, L. 1979.

44-5-105. Department of justice — powers. The department of justice may:

(1) adopt rules necessary to carry out the purposes of this chapter;

(2) hear and decide contested cases or challenges that may arise under the provisions of the Montana Administrative Procedure Act;

(3) conduct audits of the criminal history record information systems of a representative sample of state and local criminal justice agencies chosen annually on a random basis to determine whether they are in compliance with the provisions of this chapter. The function authorized in this subsection may not be assigned to any subagency that has supervisory authority over any criminal justice information system.

History: En. Sec. 23, Ch. 525, L. 1979.

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Compiler's Comments

Statement of Intent. The statement of intent attached to SB 271 (Ch. 525, L. 1979) provided in part: "Section 23(1) allows, but does not require, the department of justice to adopt rules necessary to carry out the purposes of the act. With the exception of section 9, discussed above, the legislature intends that this act be self-implementing. This grant of discretionary rulemaking authority is limited, therefore, to the adoption of: (1) rules establishing procedures and forms necessary for the efficient operation of a state repository of criminal history record information, (2) interpretive rules necessary to avoid constructions that would defeat the purposes of the act, listed in section 2, or (3) model procedural guidelines which other criminal justice agencies may or may not adopt for their own use."

44-5-106 through 44-5-110 reserved.

44-5-111. Court order to enforce compliance. Any person may apply for an order from a district court to enforce compliance with any provision of this chapter.

History: En. Sec. 24, Ch. 525, L. 1979.

44-5-112. Sanctions. The sanctions provided in 4[illegible]-205 apply to any knowing or purpos[illegible] violation of this chapter.

History: En. Sec. 22, [illegible] 525, L. 1979.

Part 2

Collection and Processing

44-5-201. Scope of authority to collect, process, and preserve criminal justice information. A criminal justice agency may collect, process, and preserve only that criminal justice information which is necessary for the performance of its authorized functions.

History: En. Sec. 5, Ch. 525, L. 1979.

44-5-202. Photographs and fingerprints. (1) The following agencies may, if authorized by subsections (2) through (5), collect, process, and preserve photographs and fingerprints:

(a) any criminal justice agency performing, under law, the functions of a police department or a sheriff's office, or both;

(b) the department of institutions; and

(c) the department of justice.

(2) The department of institutions may photograph and fingerprint anyone under the jurisdiction of the division of corrections or its successor.

(3) A criminal justice agency described in subsection (1)(a) shall photograph and fingerprint a person who has been arrested or noticed or summoned to appear to answer an information or indictment if:

(a) the charge is the commission of a felony;

(b) the identification of an accused is in issue; or

(c) it is required to do so by court order.

(4) Whenever a person charged with the commission of a felony is not arrested, he shall submit himself to the sheriff, chief of police, or other concerned law enforcement officer for fingerprinting at the time of his initial appearance in court to answer the information or indictment against him.

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(5) A criminal justice agency described in subsection (1)(a) may photograph and fingerprint an accused if he has been arrested for the commission of a misdemeanor, except that an individual arrested for a traffic, regulatory, or fish and game offense may not be photographed or fingerprinted unless he is incarcerated.

(6) Within 10 days the originating agency shall send the state repository a copy of each fingerprint taken on a completed form provided by the state repository.

(7) The state repository shall compare the fingerprints received with those already on file in the state repository. If it is determined that the individual is wanted or is a fugitive from justice, the state repository shall at once inform the originating agency. If it is determined that the individual has a criminal record, the state repository shall send the originating agency a copy of the individual's complete criminal history record.

(8) Photographs and fingerprints taken shall be returned by the state repository to the originating agency, which shall return all copies to the individual from whom they were taken:

(a) if a court so orders; or

(b) upon the request of the individual:

(i) if no ch[illegible]ere filed;

(ii) if a misdemeanor charge did not result in a conviction; or

(iii) if the individual was found innocent of the offense charged.

History: En. Sec. 6, Ch. 525, L. 1979.

44-5-203 through 44-5-210 reserved.

44-5-211. Records — form, contents, limits on use. A criminal justice agency originating initial offense reports, initial arrest records, bail records, or daily jail occupancy rosters may maintain a chronological or numerical record of these items. These records may not contain any prior criminal history record information and may not be used to gain access to any other public criminal justice information.

History: En. Sec. 7, Ch. 525, L. 1979.

44-5-212. Record preservation. Unless required by federal law, expunging, purging, or destroying of criminal justice information is not required based on the length of time such records are held.

History: En. Sec. 8, Ch. 525, L. 1979.

44-5-213. Procedures to ensure accuracy of criminal history records. In order to ensure complete and accurate criminal history record information:

(1) the department of justice shall maintain a centralized state repository of criminal history record information to serve all criminal justice agencies in the state;

(2) dispositions resulting from formal proceedings in a court having jurisdiction in a criminal action against an individual who has been photographed and fingerprinted under 44-5-202 shall be reported to the originating agency and the state repository within 15 days. If the dispositions can readily be collected and reported through the court system, the dispositions may be submitted to the state repository by the administrative office of the courts.

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(3) an originating agency shall advise the state repository within 30 days of all dispositions concerning the termination of criminal proceedings against an individual who has been photographed and fingerprinted under 44-5-202;

(4) the department of institutions shall advise the state repository within 30 days of all dispositions subsequent to conviction of an individual who has been photographed and fingerprinted under 44-5-202;

(5) each criminal justice agency shall query the state repository prior to dissemination of any criminal history record information to ensure the timeliness of the information. When no final disposition is shown by the state repository records, the state repository shall query the source of the document or other appropriate source for current status. Inquiries shall be made prior to any dissemination except in those cases in which time is of the essence and the repository is technically incapable of responding within the necessary time period. If time is of the essence, the inquiry shall still be made and the response shall be forwarded as soon as it is received.

(6) each criminal justice agency shall ensure that all its criminal justice information is complete, accurate, and current; and

(7) the department of justice shall adopt rules for criminal justice agencies other than those that are part of the judicial branch of government to implement this section. The department of justice may adopt rules for the same purpose for the judicial branch of government if the supreme court consents to the rules.

History: En. Sec. 9, Ch. 525, L. 1979.

Compiler's Comments

Statement of Intent. The statement of intent attached to SB 271 (Ch. 525, L. 1979) provided in part:

"Section 9(7) requires the department of justice to adopt rules to implement that section, entitled 'Procedures To Ensure Accuracy Of Criminal History Records.' The section provides that the department of justice is required to maintain a centralized state repository of criminal history record information; that criminal justice agencies are required to report dispositions of criminal cases to that state repository; that, where time allows, criminal justice agencies are required to check their records against the state repository's to assure their completeness before disseminating them; and that criminal justice agencies are responsible for the completeness and accuracy of their own files. The intent of the legislature in granting rulemaking authority with respect to this provision is to require the state repository to establish uniform procedures for the reporting of dispositions to it. These rules should include clear-cut directives regarding the format and nature of the information to be reported. For example, the rules could require the uses of standard forms for reporting. Or, these rules could provide for a unique tracking number to facilitate the linking of dispositions to specific arrests."

44-5-214. Inspection or transfer of criminal history records. (1) An individual or his agent may inspect any criminal history record information maintained about the individual or transfer copies of that information to any other person upon the presentation of satisfactory identification to the criminal justice agency maintaining the criminal history record information. Fingerprints may be required for identification. An agent must also submit a notarized authorization from his principal or an authorization order from a district court.

(2) If an individual's criminal history record information is maintained in the state repository, copies of the records shall be transferred to the local agency for inspection upon proper request of the individual or his agent. A local agency shall honor a verified affidavit accompanying a request by an individual for a transfer of copies of criminal history record information concerning that individual to a criminal justice agency of another state for the purpose of complying with this chapter.

(3) (a) An individual may request inspection or transfer of copies, or both, of criminal history record information only during normal working hours.

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(b) Copies of records may be made by or at the request of a properly identified individual or his authorized agent. If a machine for making copies is not reasonably available, the individual or his agent may make handwritten copies. A charge, not to exceed the cost of labor and materials, may be made by the agency for machine-produced copies. Each copy must be clearly marked to indicate that it is for inspection only.

(c) An agency employee should be available to answer questions concerning record content. A record of each request to inspect records under this section must be maintained.

History: En. Sec. 19, Ch. 525, L. 1979.

44-5-215. Challenge and correction. (1) After inspection of criminal history record information, an individual may contest the accuracy or completeness, or both, of the information about himself.

(2) If the agency maintaining the criminal history record information does not correct it to individual's satisfaction, the individual may request review and correction by the executive head of the agency.

(3) If the requested correction is denied by the head of the agency, the individual may present a challenge to the department of justice.

(4) If the agency in charge of the record in question can verify the accuracy of its record by communication with the originating criminal justice agency, it shall do so. If accuracy or completeness cannot be verified and the agency primarily originating the information containing the alleged error or omission is in the state, the individual shall address his challenge to that agency. If information necessary to verify the accuracy or completeness of the record cannot be obtained by the originating agency, it may rely on verified written documents or include the individual's allegation in its records in dissemination until there is a final disposition of the challenge.

(5) If the challenge is successful, the agency shall:

(a) supply to the individual, if requested, a list of those noncriminal justice agencies which have received copies of the criminal history record information about the individual; and

(b) immediately correct its records and notify all criminal justice agencies to which it has given erroneous or incomplete information of these changes.

History: En. Sec. 20, Ch. 525, L. 1979.

Part 3

Dissemination

44-5-301. Dissemination of public criminal justice information. (1) There are no restrictions on the dissemination of public criminal justice information except for the following:

(a) Whenever a record or index is compiled by name or universal identifier from a manual or automated system, only information about convictions, deferred prosecutions, or deferred sentences is available to the public.

(b) Whenever the conviction record reflects only misdemeanors or deferred prosecutions and whenever there are no convictions except for traffic, regulatory, or fish and game offenses for a period of 5 years from the date of the last conviction, no record or index may be disseminated pursuant to subsection (1)(a). However, the original documents are available to the public from the originating criminal justice agency.

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(2) All public criminal justice information is available from the agency that is the source of the original documents and that is authorized to maintain the documents according to applicable law. These documents shall be open, subject to the restrictions in this section, during the normal business hours of the agency. A reasonable charge may be made by a criminal justice agency for providing a copy of public criminal justice information.

History: En. Sec. 10, Ch. 525, L. 1979.

44-5-302. Dissemination of criminal history record information that is not public criminal justice information. Criminal history record information may not be disseminated to agencies other than criminal justice agencies unless:

(1) the information is disseminated with the conser r at the request of the individual ab whom it relates according to pr du specified in 44-5-214 and 44-5-215;

(2) a district court considers dissemination necessary;

(3) the information is disseminated in compliance with 44-5-304; or

(4) the agency receiving the information is authorized by law to receive it.

History: En. Sec. 11, Ch. 525, L. 1979.

44-5-303. Dissemination of confidential criminal justice information. Dissemination of confidential criminal justice information is restricted to criminal justice agencies or to those authorized by law to receive it. A criminal justice agency that accepts confidential criminal justice information assumes equal responsibility for the security of such information with the originating agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential.

History: En. Sec. 12, Ch. 525, L. 1979.

44-5-304. Development of statistical information — agreements as to access. (1) An individual or agency with the express purpose of developing statistical information may have access to criminal history record information pursuant to an agreement with a criminal justice agency. The agreement shall contain, but need not be limited to, the following provisions:

(a) specific authorization for access to specific information;

(b) a limitation on the use of the information to research, evaluative, or statistical purposes;

(c) assurance of the confidentiality and security of the information; and

(d) sanctions for violations of the agreement or this section.

(2) Proposed agreements and any completed research, statistical, or evaluative study or product developed from the use of statistical information is subject to review and approval by the department of justice to ensure compliance with this chapter.

History: En. Sec. 13, Ch. 525, L. 1979.

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44-5-305. Dissemination of copied or inspected records. (1) Criminal justice agencies shall maintain a record of all agencies and individuals to which or whom copies of criminal history record information have been disseminated.

(2) A criminal justice agency supplying criminal history record information to an individual upon request is not responsible for the use or secondary dissemination of copied or inspected information and is not required to furnish updated information except upon a subsequent request by the individual.

History: En. Sec. 21, Ch. 525, L. 1979.

Part 4

System Security

44-5-401. [illegible]inal justice info[illegible]ation system security. Provisions for the rec[illegible]ng, preservation, [illegible]semination, and management of court records are made by statute and may be supplemented by supreme court rule. Any other criminal justice agency shall protect the security of any criminal justice information system, automated or manual, under its control by taking reasonable precautions and establishing procedures to protect the system and data stored in the system from damage and for the prevention of and recovery from hazards such as fire, flood, power failure, and entry into secure areas by unauthorized persons.

History: En. Sec. 14, Ch. 525, L. 1979.

44-5-402. Automated equipment. In an automated criminal justice information system, information shall be collected, processed, and preserved on a computer dedicated solely to criminal justice information, except that, if this is impractical, a central computer may be used if adequate safeguards are built into the criminal justice information system to prevent unauthorized inquiry, modification, or destruction of criminal justice information in conformity with the current federal regulations in 28 C.F.R. section 20.21(f) or any amendment thereto.

History: En. Sec. 15, Ch. 525, L. 1979.

44-5-403. Computer programming. Procedures for each automated criminal justice information system shall assure that the information is secured by the following programming techniques and security procedures:

(1) the assignment of a terminal identification code to each terminal authorized to access the criminal justice information system;

(2) the assignment of a unique identification number to each authorized terminal operator, which number must be used to gain access to the files;

(3) the maintenance of a record of each inquiry to identify the inquiring agency, the program used to make the inquiry, the date of the inquiry, and the name of the file being queried;

(4) computer programming controls to ensure that each terminal user can obtain only that information which the user is authorized to use;

(5) creation and use of a safe place for storage of duplicate computer files;

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(6) built-in program controls to ensure that each terminal is limited to the appropriate or authorized information that can be input, modified, or canceled from it;

(7) destruction or safeguarding of system documentation and data input forms; and

(8) creation of reports to provide for an audit trail and periodic review of file accessed, modifications, and deletions. All criminal justice intelligence information shall be identified as such.

History: En. Sec. 16, Ch. 525, L. 1979.

44-5-404. Manual equipment. In a manual criminal justice information system, information shall be protected as follows:

(1) provision of adequate physical security;

(2) marking of all criminal justice intelligence information and precautions against unauthorized copying; and

(3) establishment of a log of each external inquiry [illegible] the identity of the inquirer, the date of inquiry, and the name of the files being queried.

History: En. Sec. 17, Ch. 525, L. 1979.

44-5-405. Personnel. Each automated or manual criminal justice information system, except those that are or may be maintained by courts of criminal jurisdiction, shall establish the following procedures to ensure that personnel security is achieved and maintained:

(1) Applicants for employment and persons presently employed to work with or in a computer center or manual system that processes criminal justice information are subject to investigation by the employing agency to establish their honesty and fitness to handle sensitive information. Consent to such an investigation may be a prerequisite to the processing of an employment application.

(2) The character and fitness of criminal justice information system personnel to handle sensitive information, including personnel working with manual criminal justice file systems and terminal operators as well as personnel working with the system at a central computer, shall be reviewed by the employing agency periodically. Serious violations or deficiencies under this section are grounds for dismissal.

(3) Each criminal justice agency shall develop and maintain an in-service training program and security manual to ensure that each employee who works with or has access to the criminal justice information system annually reviews and understands the nature and importance of the system's security provisions.

(4) With regard to automated systems, the criminal justice agency shall screen and may reject for employment and initiate or cause to be initiated administrative action relating to employees having direct access to criminal history record information as required by federal regulations in 28 C.F.R. section 20.21(f) or any amendment thereto.

History: En. Sec. 18, Ch. 525, L. 1979.

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Title 2, Chapter 6

Part 1

Public Records Generally

2-6-101. Definitions. (1) Writings are of two kinds:

(a) public; and

(b) private.

(2) Public writings are:

(a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country;

(b) public records, kept in this state, of private writings.

(3) Public writings are divided into four classes:

(a) laws;

(b) judicial records;

(c) other official documents;

(d) public records, kept in this state, of private writings.

(4) All other writings are private.

History: En. Secs. 3170, 3171, 3172, 3182, C. Civ. Proc. 1895; re-en. Secs. 7895, 7896, 7897, 7900, Rev. C. 1907; re-en. Secs. 10539, 10540, 10541, 10544, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 1887, 1888, 1889, 1894; re-en. Secs. 10539, 10540, 10541, 10544, R.C.M. 1935; R.C.M. 1947, 93-1001-1, 93-1001-2, 93-1001-3, 93-1001-6.

2-6-102. Citizens entitled to inspect and copy public writings. (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him on demand a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing.

History: En. Secs. 3180, 3181, C. Civ. Proc. 1895; re-en. Secs. 7898, 7899, Rev. C. 1907; re-en. Secs. 10542, 10543, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 1892, 1893; re-en. Secs. 10542, 10543, R.C.M. 1935; R.C.M. 1947, 93-1001-4, 93-1001-5.

BEST DOCUMENT AVAILABLE

Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	29-3516	X		
2. Privacy and Security Council				
3. Dissemination Regulations	Generally, Reg. No. 3		X	
Conviction Information	29-210			X
3.10 Authorizes to Criminal Justice Agencies	29-3520		X	
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	29-3520		X	
3.12 Authorizes to Private Sector	29-3520		X	
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information	29-210			X
3.20 Authorizes to Criminal Justice Agencies	29-3520		X	
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	29-3520		X	
3.22 Authorizes to Private Sector	29-3520		X	
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information	29-210			X
3.30 Authorizes to Criminal Justice Agencies	29-3520		X	
3.31 Authorizes to Govt. Non-Criminal Justice Agencies				
3.32 Authorizes to Private Sector				
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies	29-3523		X	
3.35 Prohibits to Private Sector	29-3523		X	
4. Inspection	Reg. No. 1		X	
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	29-3525		X	
	29-3520		X	
5. Right to Challenge	29-3525		X	
	29-3526		X	
	Reg. 1,7		X	
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information				
8. Purging Conviction Information				

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information				
11. Removal of Disqualifications				
12. Right to State Non-Existence of Record				
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	Reg. No. 2 29-3516		X X	
14.2 Auditing Requirements	29-3517		X	
14.3 Other Accuracy/Completeness Requirements	29-3515; 29-3517 29-3526		X X	
15. Dedication				
16. Civil Remedies	84-712.03, 07 29-3528 Reg. No. 3		 X X	X
17. Criminal Penalties	29-3527		X	
18. Public Records	29-3520 84-712		X	 X
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security				
22.1 Physical (Building) Security	29-3518; Reg. No. 3		X	
22.2 Administrative Security	29-3518; Reg. No. 3		X	
22.3 Computer Security	29-3519; Reg. No. 3		X	
23. Transaction Logs	29-3517		X	
24. Training Employees	29-3518 Reg. No. 3		X X	
25. Listing of Information Systems				
26. FOIA (Including CJI)				
27. FOIA (Excluding CJI)				
28. Central State Repository	29-209, 210			X

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Nebraska Revised Statutes

ARTICLE 35
CRIMINAL HISTORY INFORMATION

Section.
29-3523. Criminal history record information; notation of an arrest; dissemination; limitations.

29-3523. Criminal history record information; notation of an arrest; dissemination; limitations. That part of criminal history record information consisting of a notation of an arrest, when after an interval of one year active prosecution is neither completed nor pending, shall not be disseminated to persons other than criminal justice agencies except when the subject of the record:

(1) Is currently the subject of prosecution or correctional control as the result of a separate arrest;

(2) Is currently an announced candidate for or holder of public office;

(3) Has made a notarized request for the release of such record to a specific person; or

(4) Is kept unidentified, and the record is used for purposes of surveying or summarizing individual or collective law enforcement agency activity or practices, or the dissemination is requested consisting only of release of criminal history record information showing (a) dates of arrests, (b) reasons for arrests, and (c) the nature of the dispositions, including but not limited to reasons for not prosecuting the case or cases.

Source: Laws 1978, LB 713, § 25; Laws 1980, LB 782, § 1.
Effective date July 19, 1980.

* * * * *

29-208. Criminal identification; agents; power of Governor to appoint. The Governor is hereby authorized to appoint such agents as may be necessary for carrying out the provisions of sections 29-208 to 29-210.

Source: Laws 1921, c. 207, § 1, p. 739; C.S.1922, § 9942; C.S.1929, § 29-208.

29-209. Fingerprints and descriptions; to be furnished State Patrol by sheriffs, peace officers, and state agencies; FBI; copy. It is hereby made the duty of the sheriffs of the several counties of the State of Nebraska, the chiefs of police of incorporated cities therein, marshals of incorporated cities and towns therein, and agencies of state government having powers of arrest to furnish the Nebraska State Patrol two copies of fingerprints on forms provided by the Nebraska State

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Patrol and the Federal Bureau of Investigation, and descriptions of all persons who are arrested by them (1) for any felony or (2) as felony fugitives from the criminal justice system of another jurisdiction. This section is not intended to include violators of city ordinances or of persons arrested for other trifling offenses. The Nebraska State Patrol shall in all appropriate cases forward one copy of such fingerprints and other necessary indentifying data and information to the system maintained by the Federal Bureau of Investigation.

Source: Laws 1921, c. 207, § 2, p. 739; C.S.1922, § 9943; C.S.1929, § 29-209; R.S.1943, § 29-209; Laws 1978, LB 713, § 16.

29-210. Nebraska State Patrol; records; system of cards; information; powers. The Nebraska State Patrol is hereby authorized (1) to keep a complete record of all reports filed of all personal property stolen, lost, found, pledged or pawned, in any city or county of this state; (2) to provide for the installation of a proper system and file, and cause to be filed therein cards containing an outline of the methods of operation employed by criminals; (3) to use any system of identification it deems advisable, or that may be adopted in any of the penal institutions of the state; (4) to keep a record consisting of duplicates of measurements, process , operations, plates, photographs, measurements and descriptions of all persons confined in penal institutions of this state; (5) to procure and maintain, so far as practicable, plates, photographs, descriptions and information concerning all persons who shall hereafter be convicted of felony or imprisoned for violating the military, naval or criminal laws of the United States, and of well-known and habitual criminals from whatever source procurable; (6) to furnish any criminal justice agency with any information, material, records, or means of identification which may properly be disseminated and that it may desire in the proper administration of criminal justice; (7) to upgrade, when feasible, the existing law enforcement communications network; and (8) to establish and maintain an improved system or systems by which relevant information may be collected, coordinated, and made readily available to serve qualified persons or agencies concerned with the administration of criminal justice.

Source: Laws 1921, c. 207, § 3, p. 739; C.S.1922, § 9944; C.S.1929, § 29-210; R.S.1943, § 29-210; Laws 1978, LB 713, § 17.

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84-712. Public records; free examination; memorandum and abstracts. Except as otherwise expressly provided by statute, all citizens of this state, and all other persons interested in the examination of the public records, are hereby fully empowered and authorized to examine the same, and to make memoranda and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business.

Source: R.S.1866, c. 44, § 1, p. 297; R.S.1913, § 5595; C.S.1922, § 4902; Laws 1925, c. 146, § 1, p. 381; Laws 1927, c. 193, § 1, p. 551; C.S.1929, § 84-712; R.S.1943, § 84-712; Laws 1961, c. 454, § 3, p. 1383.

Dockets of justice containing entry of judgments are public records. State ex rel. Newby v. Ellsworth, 61 Neb. 444, 85 N.W. 439.

Party was not entitled to inspection of certified copy of court reporter's record before same is offered in evidence. Spielman v. Flynn, 19 Neb. 342, 27 N.W. 224.

Any person interested may examine records without charge, and fee book of clerk of court is public record. State v. Meeker, 19 Neb. 106, 26 N.W. 620.

Numerical indexes of instruments concerning title to real estate kept by county clerk are public records. State ex rel. Miller v. Sovereign, 17 Neb. 173, 22 N.W. 353.

84-712.01. Public records; right of citizens; full access. Sections 84-712 to 84-712.03 shall be liberally construed whenever any state, county or political subdivision fiscal records, audit, warrant, voucher, invoice, purchase order, requisition, payroll, check, receipt or other record of receipt, cash or expenditure involving public funds is involved in order that the citizens of this state shall have full rights to know of, and have full access to information on the public finances of the government and the public bodies and entities created to serve them.

Source: Laws 1961, c. 454, § 2, p. 1383.

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	216.185 179A.080			
2. Privacy and Security Council	179A.080			
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	179A.100			X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	179A.100			X
3.12 Authorizes to Private Sector	179A.100			X
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	179A.100			X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	179A.100			X
3.22 Authorizes to Private Sector	179A.100			X
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	179A.100			X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	179A.100			X
3.32 Authorizes to Private Sector	179A.100			X
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	179A.150			X
5. Right to Challenge	179A.150			X
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information	179A.160			X
8. Purging Conviction Information				

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information	179.255 179.275	X X		
10. Sealing Conviction Information	453.336.5 179.255, 275	X X		
11. Removal of Disqualifications	453.336.8	X		
12. Right to State Non-Existence of Record				
13. Research Access	179A.100 179A.090.5			X X
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	216.235.8	X		
14.2 Auditing Requirements	179A.080.3 216.235	 X		X
14.3 Other Accuracy/Completeness Requirements	216.235 179A.090	X		 X
15. Dedication				
16. Civil Remedies				
17. Criminal Penalties	239.010 179A.170	X		 X
18. Public Records	239.010	X		
19. Separation of Files				
20. Regulation of Intelligence Collection	216.290 216.245	X X		
21. Regulation of Intelligence Dissemination	216.245	X		
22. Security				
22.1 Physical (Building) Security	179A.080.1			X
22.2 Administrative Security	179A.080.2			X
22.3 Computer Security				
23. Transaction Logs	179A.130			X
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)				
27. FOIA (Excluding CJI)				
28. Central State Repository	216.235	X		

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Nevada Revised Statutes

179A.080 Duties of commission. The commission is responsible for administering this chapter and may adopt regulations for that purpose. The commission shall:

1. Establish regulations for the security of the system of Nevada records of criminal history so that it is adequately protected from fire, theft, loss, destruction, other hazards and unauthorized access.
2. Adopt regulations and standards for personnel employed by agencies of criminal justice in positions of responsibility for maintenance and dissemination of records of criminal history.
3. Provide for audits of information systems by qualified public or private agencies, organizations or persons.

(Added to NRS by 1979, 1854)

179A.090 Prerequisite to dissemination of records; exceptions. No agency of criminal justice in Nevada which has a cooperative agreement with a repository of Nevada records of criminal history may disseminate any record of criminal history which includes information about a felony or a gross misdemeanor without first making inquiry of the repository of Nevada records of criminal history, to obtain the most current and complete information available, unless:

1. The information is needed for a purpose in the administration of criminal justice for which time is essential, and the repository of Nevada records of criminal history is not able to respond within the required time;
2. The full information requested and to be disseminated relates to specific facts or incidents which are within the direct knowledge of an officer, agent or employee of the agency which disseminates the information;
3. The full information requested and to be disseminated was received as part of a summary of records of criminal history from the Nevada records of criminal history information repository within 30 days before the information is disseminated;
4. The statute, executive order, court rule or court order under which the information is to be disseminated refers only to information which is in the files of the agency which makes the dissemination; or
5. The information requested and to be disseminated is for the express purpose of research, evaluation or statistical activities to be based upon information maintained in the files of the agency or agencies from which the information is sought.

(Added to NRS by 1979, 1851)

179A.100 Records which may be disseminated without restriction; persons to whom records must be disseminated upon request.

1. Records of criminal history which reflect conviction records only may be disseminated by an agency of criminal justice without any restriction pursuant to this chapter.
2. A record of criminal history which pertains to an incident for which a person is currently within the system of criminal justice, including parole or probation, may be disseminated by an agency of criminal justice without any restriction pursuant to this chapter.

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3. An agency of criminal justice must disseminate to a prospective employer, upon request, records of criminal history concerning a prospective employee which:

(a) Reflect convictions only; or

(b) Pertain to an incident for which the prospective employee is currently within the system of criminal justice, including parole or probation.

4. Records of criminal history must be disseminated by an agency of criminal justice upon request, to the following persons or governmental entities for the following purposes:

(a) The person who is the subject of the record of criminal history for the purposes of NRS 179A.150.

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	106-B:14	X		
2. Privacy and Security Council	Reg. Sect. 7.C,D	X		
3. Dissemination Regulations	Gen. 106-B:14	X		
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	Reg. Sect. 3.B.2	X		
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	Reg. Sect. 3.B	X		
3.12 Authorizes to Private Sector	Reg. Sect. 3.B	X		
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	Reg. Sect. 3.A.2	X		
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	Reg. Sect. 3.B.8	X		
3.22 Authorizes to Private Sector	Reg. Sect. 3.B.8	X		
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies	Reg. Sect. 3.B.3	X		
3.25 Prohibits to Private Sector	Reg. Sect. 3.B.3	X		
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	Reg. Sect. 3.A.2	X		
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	Reg. Sect. 3.B.8	X		
3.32 Authorizes to Private Sector	Reg. Sect. 3.B.8	X		
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies	Reg. Sect. 3.B.3	X		
3.35 Prohibits to Private Sector	Reg. Sect. 3.B.3	X		
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	Reg. 3.B.9	X		
5. Right to Challenge	Reg. Sect. 7	X		
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information	Reg. Sect. 3.D	X		
8. Purging Conviction Information	Reg. Sect. 3.D	X		

NEW HAMPSHIRE

BEST DOCUMENT AVAILABLE

Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information	651.5	X		
11. Removal of Disqualifications	651.5	X		
12. Right to State Non-Existence of Record	651.5	X		
13. Research Access	Reg. Sect. 3.B.7	X		
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	106-B:14	X		
14.2 Auditing Requirements	Reg. Sect. 5	X		
14.3 Other Accuracy/Completeness Requirements	Reg. Sect. 4	X		
15. Dedication				
16. Civil Remedies				
17. Criminal Penalties	651.5X 106-B:14	X X		
18. Public Records	7-A:1 91-A:4	X X		
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security				
22.1 Physical (Building) Security	Reg. Sect. 1	X		
22.2 Administrative Security	Reg. Sect. 2			
22.3 Computer Security				
23. Transaction Logs	Reg. Sect. 3.C.4	X		
24. Training Employees				
25. Listing of Information Systems	7-A:2	X		
26. FOIA (Including CJI)				
27. FOIA (Excluding CJI)	106-B:14 91-A:5	X X		
28. Central State Repository	106-B:14	X		

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	Exec. Order 53:1-12	X X		
2. Privacy and Security Council	Exec. Order	X		
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	53:1-16, 17	X		
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	Exec. Order	X		
3.12 Authorizes to Private Sector	Exec. Order	X		
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	53:1-16, 17	X		
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	Exec. Order	X		
3.22 Authorizes to Private Sector	Exec. Order	X		
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	53:1-16, 17	X		
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	Exec. Order	X		
3.32 Authorizes to Private Sector	Exec. Order	X		
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy				
5. Right to Challenge				
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information				
8. Purging Conviction Information				

NEW JERSEY

BEST DOCUMENT AVAILABLE

Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information	2C:52-6			X
10. Sealing Conviction Information	2C:52-2 2C:52-3 2C:52-4,5			X X X
11. Removal of Disqualifications	2C:52-27			X
12. Right to State Non-Existence of Record	2C:52-27			X
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	53:1-20.2 53:1-13, 14, 15, 18	X X		
14.2 Auditing Requirements				
14.3 Other Accuracy/Completeness Requirements	53:1-13	X		
15. Dedication				
16. Civil Remedies	47:1A-4 53:1-20	X		X
17. Criminal Penalties	2C:52-30 53:1-20	X X		
18. Public Records	47:1A-1			X
19. Separation of Files				
20. Regulation of Intelligence Collection	53:6-4,5	X		
21. Regulation of Intelligence Dissemination	53:6-5	X		
22. Security				
22.1 Physical (Building) Security				
22.2 Administrative Security				
22.3 Computer Security				
23. Transaction Logs				
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)				
27. FOIA (Excluding CJI)				
28. Central State Repository	53:1-13	X		

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New Jersey Statutes Annotated

CHAPTER 52

EXPUNGEMENT OF RECORDS

Section

2C:52–1. Definition of Expungement.
2C:52–2. Indictable Offenses.
2C:52–3. Disorderly Persons Offenses and Petty Disorderly Persons Offenses.
2C:52–4. Ordinances.
2C:52–4.1 Juvenile Delinquent; Expungement of Adjudications and Dismissal of Charges.
2C:52–5. Expungement of Records of Young Drug Offenders.
2C:52–6. Arrests Not Resulting in Conviction.
2C:52–7. Petition for Expungement.
2C:52–8. Statements to Accompany Petition.
2C:52–9. Order Fixing Time for Hearing.
2C:52–10. Service of Petition and Documents.
2C:52–11. Order Expungement Where No Objection Prior to Hearing.
2C:52–12. Denial of Relief Although No Objection Entered.
2C:52–13. When Hearing on Petition for Expungement Shall Not Be Held.
2C:52–14. Grounds for Denial of Relief.
2C:52–15. Records to be Removed; Control.
2C:52–16. Expunged Record Including Names of Persons Other Than Petitioner.
2C:52–17. Use of Expunged Records by Agencies on Pending Petition for Expungement.
2C:52–18. Supplying Information to Violent Crimes Compensation Board.
2C:52–19. Order of Superior Court Permitting Inspection of Records or Release of Information; Limitations.
2C:52–20. Use of Expunged Records in Conjunction with Supervisory Treatment or Diversion Programs.
2C:52–21. Use of Expunged Records in Conjunction with Setting Bail, Presentence Report or Sentencing.
2C:52–22. Use of Expunged Records by Parole Board.
2C:52–23. Use of Expunged Records by Department of Corrections.
2C:52–24. County Prosecutor's Obligation to Ascertain Propriety of Petition.
2C:52–25. Retroactive Application.
2C:52–26. Vacating of Orders of Sealing; Time; Basis.
2C:52–27. Effect of Expungement.
2C:52–28. Motor Vehicle Offenses.
2C:52–29. Fee.
2C:52–30. Disclosure of Expungement Order.
2C:52–31. Limitation.
2C:52–32. Construction.

2C:52-1. Definition of Expungement

a. Except as otherwise provided in this chapter, expungement shall mean the extraction and isolation of all records on file within any court, detention or correctional facility, law enforcement or criminal justice agency concerning a person's detection, apprehension, arrest, detention, trial or disposition of an offense within the criminal justice system.

b. Expunged records shall include complaints, warrants, arrests, commitments, processing records, fingerprints, photographs, index cards, "rap sheets" and judicial docket records.
L.1979, c. 178, § 108, eff. Sept. 1, 1979.

Historical Note

Source: C. 2A:85-17 (L.1973, c. 191, § 3).

Notes of Decisions

1. Arrests

An arrest not resulting in a conviction may be expunged under the expungement statute. State v. DeMarco, 174 N.J.Super. 411, 416 A.2d 949 (1980).

2C:52-2. Indictable Offenses

a. In all cases, except as herein provided, wherein a person has been convicted of a crime under the laws of this State and who has not been convicted of any prior or subsequent crime, whether within this State or any other jurisdiction, and has not been adjudged a disorderly person or petty disorderly person on more than two occasions may, after the expiration of a period of 10 years from the date of his conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration, whichever is later, present a duly verified petition as provided in section 2C:52-7 to the Superior Court in the county in which the conviction was entered praying that such conviction and all records and information pertaining thereto be expunged.

Although subsequent convictions for no more than two disorderly or petty disorderly offenses shall not be an absolute bar to relief, the nature of those conviction or convictions and the circumstances surrounding them shall be considered by the court and may be a basis for denial of relief if they or either of them constitute a continuation of the type of unlawful activity embodied in the criminal conviction for which expungement is sought.

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b. Records of conviction pursuant to statutes repealed by this Code for the crimes of murder, manslaughter, treason, anarchy, kidnapping, rape, forcible sodomy, arson, perjury, false swearing, robbery, embracery, or a conspiracy or any attempt to commit any of the foregoing, or aiding, assisting or concealing persons accused of the foregoing crimes, shall not be expunged.

Records of conviction for the following crimes specified in the New Jersey Code of Criminal Justice shall not be subject to expungement: Section 2C:11–1 et seq. (Criminal Homicide), except death by auto as specified in section 2C:11–5; section 2C:13–1 (Kidnapping); sections 2C:14–2 (Aggravated Sexual Assault); section 2C:15–1 (Robbery); section 2C:17–1 (Arson and Related Offenses); section 2C:28–1 (Perjury); section 2C:28–2 (False Swearing) and conspiracies or attempts to commit such crimes.

c. In the case of conviction for the sale or distribution of a controlled dangerous substance or possession thereof with intent to sell, expungement shall be denied except where the crimes relate to:

(1) Marijuana, where the total quantity sold, distributed or possessed with intent to sell was 25 grams or less, or

(2) Hashish, where the total quantity sold, distributed or possessed with intent to sell was 5 grams or less.

L.1979, c. 178, § 109, eff. Sept. 1, 1979.

Historical Note

Source: C. 2A:85–15 (L.1973, c. 191, § 1, amended by L.1975, c. 47); N.J.S. 2A:164–28, amended by L.1975, c. 383, § 1.

Notes of Decisions

Juvenile offenses 1
Qualifications for expungement 2

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1. Juvenile offenses

Adjudication of juvenile delinquency could not be expunged. State v. W. J. A., 173 N.J.Super. 19, 412 A.2d 1355 (1980).

2. Qualifications for expungement

Under the expungement chapter, a petitioner may not qualify for expungement if he has been convicted of any prior or subsequent crime or has been adjudged a disorderly person or petty disorderly person on more than two occasions and, therefore, the court cannot know whether the statutory qualifications for expungement are satisfied unless every crime and offense, whether resulting in acquittal or conviction, is revealed in the petition. State v. DeMarco, 174 N.J.Super. 411, 416 A.2d 949 (1980).

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2C:52-3. Disorderly Persons Offenses and Petty Disorderly Persons Offenses

Any person convicted of a disorderly persons offense or petty disorderly persons offense under the law of this State who has not been convicted of any prior or subsequent crime, whether within this State or any other jurisdiction, or of another two disorderly persons or petty disorderly persons offense, may, after the expiration of a period of 5 years from the date of his conviction, payment of fine, satisfactory completion of probation or release from incarceration, whichever is later, present a duly verified petition as provided in section 2C:52–7 hereof to the Superior Court in the county in which the conviction was entered praying that such conviction and all records and information pertaining thereto be expunged.

L.1979, c. 178, § 110, eff. Sept. 1, 1979.

Historical Note

Source: C. 2A:85–15 (L.1973, c. 191, § 1, amended by L.1975, c. 47); C. 2A:169–11 (L.1968, c. 279, § 1).

Notes of Decisions

1. Construction and application

Defendant's subsequent acquittal of a crime did not disqualify him from obtaining expungement of a prior disorderly persons conviction and was not a ground for denying relief. State v. DeMarco, 174 N.J.Super. 411, 416 A.2d 949 (1980).

2C:52-4. Ordinances

In all cases wherein a person has been found guilty of violating a municipal ordinance of any governmental entity of this State and who has not been convicted of any prior or subsequent crime, whether within this State or any other jurisdiction, and who has not been adjudged a disorderly person or petty disorderly person on more than two occasions, may, after the expiration of a period of 2 years from the date of his conviction, payment of fine, satisfactory completion of probation or release from incarceration, whichever is later, present a duly verified petition as provided in section 2C:52–7 herein to the Superior Court in the county in which the violation occurred praying that such conviction and all records and information pertaining thereto be expunged.

L.1979, c. 178, § 111, eff. Sept. 1, 1979.

Historical Note

Source: C. 2A:85–15 (L. 1973, c. 191, § 1, amended by L.1975, c. 47).

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2C:52-4.1 Juvenile Delinquent; Expungement of Adjudications and Dismissal of Charges

a. Any person adjudged a juvenile delinquent may have such adjudication expunged as follows:

(1) Pursuant to N.J.S. 2C:52–2, if the act committed by the juvenile would have constituted a crime if committed by an adult;

(2) Pursuant to N.J.S. 2C:52–3, if the act committed by the juvenile would have constituted a disorderly or petty disorderly persons offense if committed by an adult; or

(3) Pursuant to N.J.S. 2C:52–4, if the act committed by the juvenile would have constituted an ordinance violation if committed by an adult.

For purposes of expungement, any act which resulted in a juvenile being adjudged a delinquent shall be classified as if that act had been committed by an adult.

b. Additionally, any person who has been adjudged a juvenile delinquent may have his entire record of delinquency adjudications expunged if:

(1) Five years have elapsed since the final discharge of the person from legal custody or supervision or 5 years have elapsed after the entry of any other court order not involving custody or supervision;

c. Any person who has been arrested or held to answer for a crime shall be barred from the relief provided in this section where the dismissal, discharge, or acquittal resulted from a determination that the person was insane or lacked the mental capacity to commit the crime charged.

L.1979, c. 178, § 113, eff. Sept. 1, 1979.

Source: C. 2A:85–15 (L.1973, c. 191, § 1, amended by L.1975, c. 47).

2C:52-7. Petition for Expungement

Every petition for expungement filed pursuant to this chapter shall be verified and include:

a. Petitioner's date of birth.

b. Petitioner's date of arrest.

c. The statute or statutes and offense or offenses for which petitioner was arrested and of which petitioner was convicted.

d. The original indictment, summons or complaint number.

e. Petitioner's date of conviction, or date of disposition of the matter if no conviction resulted.

f. The court's disposition of the matter and the punishment imposed, if any.

L.1979, c. 178, § 114, eff. Sept. 1, 1979.

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Historical Note

Source: C. 2A:85–15 (L.1973, c. 191, § 1, amended by L.1975, c. 47, § 1).

Notes of Decisions

Construction and application 1
Date of conviction or disposition 2
Statutes and offenses 3

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1. Construction and application

Under the expungement chapter, a petitioner may not qualify for expungement if he has been convicted of any prior or subsequent crime or has been adjudged a disorderly person or petty disorderly person on more than two occasions and, therefore, the court cannot know whether the statutory qualifications for expungement are satisfied unless every crime and offense, whether resulting in acquittal or conviction, is revealed in the petition. State v. DeMarco, 174 N.J.Super. 411, 416 A.2d 949 (1980).

2. Date of conviction or disposition

The subsection of this section relating to petitions for expungement which requires a petition for expungement to include the date of conviction "or date of disposition of the matter if no conviction resulted" clearly demonstrates that an expungement petition must include enumeration of any arrests not resulting in convictions. State v. DeMarco, 174 N.J.Super. 411, 416 A.2d 949 (1980).

3. Statutes and offenses

This section which provid s in relevant part that every petition for expungement shall include the "statute or statutes and offense or offenses for which petitioner was arrested and of which petitioner was convicted" requires the recitation of charges which resulted in arrest as well as of charges leading to conviction; the relative clauses "for which petitioner was arrested" and "of which petitioner was convicted" modify the topic "statute or statutes and offense or offenses" and, because the relative clauses are connected by the conjunctive, they are grammatically parallel and should be given equal effect. State v. DeMarco, 174 N.J.Super. 411, 416 A.2d 949 (1980).

2C:52–8. Statements to Accompany Petition

There shall be attached to a petition for expungement:

a. A statement with the affidavit or verification that there are no disorderly persons, petty disorderly persons or criminal charges pending against the petitioner at the time of filing of the petition for expungement.

b. In those instances where the petitioner is seeking the expungement of a criminal conviction, a statement with affidavit or verification that he has never been granted expungement, sealing or similar relief regarding a criminal conviction by any court in this State or other state or by any Federal court. "Sealing" refers to the relief previously granted pursuant to P.L. 1973, c. 191 (C. 2A:85–15 et seq.).

c. In those instances where a person has received a dismissal of a criminal charge because of acceptance into a supervisory treatment or any other diversion program, a statement with affidavit or verification setting forth the nature of the original charge, the court of disposition and date of disposition.

L.1979, c. 178, § 115, eff. Sept. 1, 1979.

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2C:52-9. Order Fixing Time for Hearing

Upon the filing of a petition for relief pursuant to this chapter, the court shall, by order, fix a time not less than 35 nor more than 60 days thereafter for hearing of the matter.

L.1979, c. 178, § 116, eff. Sept. 1, 1979.

Source: C. 2A:85-16 (L.1973, c. 191, § 2); N.J.S. 2A:164-28, amended by L.1975, c. 383, § 1; 1968, c. 279, § 1). C. 2A:169-11 (L.

2C:52-10. Service of Petition and Documents

A copy of each petition, together with a copy of all supporting documents, shall be served pursuant to the rules of court upon the Superintendent of State Police; the Attorney General; the county prosecutor of the county wherein the court is located; the chief of police or other executive head of the police department of the municipality wherein the offense was committed; the chief law enforcement officer of any other law enforcement agency of this State which participated in the arrest of the individual; the superintendent or warden of any institution in which the petitioner was confined; and, if a disposition was made by a municipal court, upon the magistrate of that court. Service shall be made within 5 days from the date of the order setting the date for the hearing upon the matter.

L.1979, c. 178, § 117, eff. Sept. 1, 1979.

Source: C. 2A:85-16 (L.1973, c. 191, § 2); N.J.S. 2A:164-28, amended by L.1975, c. 383, § 1; 1968, c. 279, § 1). C. 2A:169-11 (L.

2C:52-11. Order Expungement Where No Objection Prior to Hearing

If, prior to the hearing, there is no objection from those law enforcement agencies notified or from those offices or agencies which are required to be served under 2C:52-10, and no reason, as provided in section 2C:52-14, appears to the contrary, the court may, without a hearing, grant an order directing the clerk of the court and all relevant criminal justice and law enforcement agencies to expunge records of said disposition including evidence of arrest, detention, conviction and proceedings related thereto.

L.1979, c. 178 § 118, eff. Sept. 1, 1979.

Source: C. 2A:85-17 (L.1973, c. 191, § 3); N.J.S. 2A:164-28, amended by L.1975, c. 383, § 1; 1968, c. 279, § 1). C. 2A:169-11 (L.

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2C:52-12. Denial of Relief Although No Objection Entered

In the event that none of the persons or agencies required to be noticed under 2C:52–10 has entered any objection to the relief being sought, the court may nevertheless deny the relief sought if it concludes that petitioner is not entitled to relief for the reasons provided in section 2C:52–14.

L.1979, c. 178, § 119, eff. Sept. 1, 1979.

Source: C. 2A:85-19 (L.1973, c. 191, § 5).

2C:52-13. When Hearing on Petition for Expungement Shall Not Be Held

No petition for relief made pursuant to this section shall be heard by any court if the petitioner, at the time of filing or date of hearing, has a charge or charges pending against him which allege the commission of a crime, disorderly persons offense or petty disorderly persons offense. Such petition shall not be heard until such times as all pending criminal and or disorderly persons charges are adjudicated to finality.

L.1979, c. 178, § 120, eff. Sept. 1, 1979.

2C:52-14. Grounds for Denial of Relief

A petition for expungement filed pursuant to this chapter shall be denied when:

a. Any statutory prerequisite, including any provision of this chapter, is not fulfilled or there is any other statutory basis for denying relief.

b. The need for the availability of the records outweighs the desirability of having a person freed from any disabilities as otherwise provided in this chapter. An application may be denied under this subsection only following objection of a party given notice pursuant to 2C:52–10 and the burden of asserting such grounds shall be on the objector.

c. In connection with a petition under section 2C:52–6, the acquittal, discharge or dismissal of charges resulted from a plea bargaining agreement involving the conviction of other charges. This bar, however, shall not apply once the conviction is itself expunged.

d. The arrest or conviction sought to be expunged is, at the time of hearing, the subject matter of civil litigation between the petitioner or his legal representative and the State, any governmental entity thereof or any State agency and the representatives or employees of any such body.

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e. A person has had a previous criminal conviction expunged regardless of the lapse of time between the prior expungement, or sealing under prior law, and the present petition. This provision shall not apply:

(1) When the person is seeking the expungement of a municipal ordinance violation or,

(2) When the person is seeking the expungement of records pursuant to section 2C:52–6.

f. The person seeking the relief of expungement of a conviction for a disorderly persons, petty disorderly persons, or criminal offense has prior to or subsequent to said conviction been granted the dismissal of criminal charges following completion of a supervisory treatment or other diversion program.

L.1979, c. 178, § 121, eff. Sept. 1, 1979.

Historical Note

Source: C. 2A:85–19 (L.1973, c. 191, § 5); 2A:85–20 (L.1973, c. 191, § 6).

Notes of Decisions

1. Construction and application

Defendant's subsequent acquittal of a crime did not disqualify him from obtaining expungement of a prior disorderly persons conviction and was not a ground for denying relief. State v. DeMarco, 174 N.J.Super. 411, 416 A.2d 949 (1980).

2C:52–15. Records to Be Removed; Control

If an order of expungement of records of arrest or conviction under this chapter is granted by the court, all the records specified in said order shall be removed from the files of the agencies which have been noticed of the pendency of petitioner's motion and which are, by the provisions of this chapter, entitled to notice, and shall be placed in the control of a person who has been designated by the head of each such agency which, at the time of the hearing, possesses said records. That designated person shall, except as otherwise provided in this chapter, insure that such records or the information contained therein are not released for any reason and are not utilized or referred to for any purpose. In response to requests for information or records of the person who was arrested or convicted, all noticed officers, departments and agencies shall reply, with respect to the arrest, conviction or related proceedings which are the subject of the order, that there is no record information.

L.1979, c. 178, § 122, eff. Sept. 1, 1979.

Source: C. 2A:85–17 (L.1973, c. 191, § 3); N.J.S. 2A:164–28, amended by L.1975, c. 383; C. 2A:169–11 (L.1968, c. 279).

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2C:52-16. Expunged Record Including Names of Persons Other Than Petitioner

Any record or file which is maintained by a judicial or law enforcement agency, or agency in the criminal justice system, which is the subject of an order of expungement which includes the name or names of persons other than that of the petitioner need not be isolated from the general files of the agency retaining same if the other persons named in said record or file have not been granted an order of expungement of said record, provided that a copy of the record shall be given to the person designated in 2C:52–15 and the original shall remain in the agency's general files with the petitioner's name and other personal identifiers obliterated and deleted.

L.1979, c. 178, § 123, eff. Sept. 1, 1979.

2C:52-17. Use of Expunged Records by Agencies on Pending Petition for Expungement

Expunged records may be used by the agencies that possess same to ascertain whether a person has had prior conviction expunged, or sealed under prior law, when the agency possessing the record is noticed of a pending petition for the expungement of a conviction. Any such agency may supply information to the court wherein the motion is pending and to the other parties who are entitled to notice pursuant to 2C:52–10.

L.1979, c. 178, § 124, eff. Sept. 1, 1979.

2C:52-18. Supplying Information to Violent Crimes Compensation Board

Information contained in expunged records may be supplied to the Violent Crimes Compensation Board, in conjunction with any claim which has been filed with said board.

L.1979, c. 178, § 125, eff. Sept. 1, 1979.

2C:52-19. Order of Superior Court Permitting Inspection of Records or Release of Information; Limitations

Inspection of the files and records, or release of the information contained therein, which are the subject of an order of expungement, or sealing under prior law, may be permitted by the Superior Court upon motion for good cause shown and compelling need based on specific facts. The motion or any order granted pursuant thereto shall specify the person or persons to whom the records and information are to be shown and the

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purpose for which they are to be utilized. Leave to inspect shall be granted by the court only in those instances where the subject matter of the records of arrest or conviction is the object of litigation or judicial proceedings. Such records may not be inspected or utilized in any subsequent civil or criminal proceeding for the purposes of impeachment or otherwise but may be used for purposes of sentencing on a subsequent offense after guilt has been established.

L.1979, c. 178, § 126, eff. Sept. 1, 1979.

Source: C. 2A:85-18 (L.1973, c. 191, § 4).

2C:52-20. Use of Expunged Records in Conjunction with Supervisory Treatment or Diversion Programs

Expunged records may be used by any judge in determining whether to grant or deny the person's application for acceptance into a supervisory treatment or diversion program for subsequent charges. Any expunged records which are possessed by any law enforcement agency may be supplied to the Attorney General, any county prosecutor or judge of this State when same are requested and are to be used for the purpose of determining whether or not to accept a person into a supervisory treatment or diversion program for subsequent charges.

L.1979, c. 178, § 127, eff. Sept. 1, 1979.

2C:52-21. Use of Expunged Records in Conjunction with Setting Bail, Presentence Report or Sentencing

Expunged records, or sealed records under prior law, of prior arrests or convictions shall be provided to any judge, county prosecutor, probation department or the Attorney General when same are requested for use in conjunction with a bail hearing or for the preparation of a presentence report or for purpose of sentencing.

L.1979, c. 178, § 128, eff. Sept. 1, 1979.

2C:52-22. Use of Expunged Records by Parole Board

Expunged records, or sealed records under prior law, of prior disorderly persons, petty disorderly persons and criminal convictions shall be provided to the Parole Board when same are requested for the purpose of evaluating the granting of parole to the person who is the subject of said records. Such sealed or expunged records may be used by the Parole Board in the same manner and given the same weight in its considerations as if the records had not been expunged or sealed.

L.1979, c. 178, § 129, eff. Sept. 1, 1979.

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2C:52-23. Use of Expunged Records by Department of Corrections

Expunged records, and records sealed under prior law, shall be provided to the Department of Corrections for its use solely in the classification, evaluation and assignment to correctional and penal institutions of persons placed in its custody.
L.1979, c. 178, § 130, eff. Sept. 1, 1979.

2C:52-24. County Prosecutor's Obligation to Ascertain Propriety of Petition

Notwithstanding the notice requirements provided herein, it shall be the obligation of the county prosecutor of the county wherein any petition for expungement is filed to verify the accuracy of the allegations contained in the petition for expungement and to bring to the court's attention any facts which may be a bar to, or which may make inappropriate the granting of, such relief. If no disabling, adverse or relevant information is ascertained other than that as included in the petitioner's affidavit, such facts shall be communicated by the prosecutor to the hearing judge.
L.1979, c. 178, § 131, eff. Sept. 1, 1979.

2C:52-25. Retroactive Application

This chapter shall apply to arrests and convictions which occurred prior to, and which occur subsequent to, the effective date of this act.
L.1979, c. 178, § 132, eff. Sept. 1, 1979.

2C:52-26. Vacating of Orders of Sealing; Time; Basis

If, within 5 years of the entry of an expungement order, any party to whom notice is required to be given pursuant to section 2C:52–10 notifies the court which issued the order that at the time of the petition or hearing there were criminal, disorderly persons or petty disorderly persons charges pending against the person to whom the court granted such order, which charges were not revealed to the court at the time of hearing of the original motion or that there was some other statutory disqualification, said court shall vacate the expungement order in question and reconsider the original motion in conjunction with the previously undisclosed information.
L.1979, c. 178, § 133, eff. Sept. 1, 1979.

2C:52-27. Effect of Expungement

Unless otherwise provided by law, if an order of expungement is granted, the arrest, conviction and any proceedings re-

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lated thereto shall be deemed not to have occurred, and the petitioner may answer any questions relating to their occurrence accordingly, except as follows:

a. The fact of an expungement, sealing or similar relief shall be disclosed as provided in section 2C:52–8b.

b. The fact of an expungement of prior charges which were dismissed because of the person's acceptance into and successful completion of a supervisory treatment or other diversion program shall be disclosed by said person to any judge who is determining the propriety of accepting said person into a supervisory treatment or other diversion program for subsequent criminal charges; and

c. Information divulged on expunged records shall be revealed by a petitioner seeking employment within the judicial branch or with a law enforcement agency and such information shall continue to provide a disability as otherwise provided by law.

L.1979, c. 178, § 134, eff. Sept. 1, 1979.

Source: C. 2A:85–21 (L.1973, c. 191, § 7); N.J.S. 2A:164–28, amended by L.1975, c. 383; C. 2A:169–11 (L.1968, c. 279, § 1).

2C:52–28. Motor Vehicle Offenses

Nothing contained in this chapter shall apply to arrests or conviction for motor vehicle offenses contained in Title 39.

L.1979, c. 178, § 135, eff. Sept. 1, 1979.

2C:52–29. Fee

Any person who files an application pursuant to this chapter shall pay to the State Treasurer a fee of $30.00 to defer administrative costs in processing an application hereunder.

L.1979, c. 178, § 136, eff. Sept. 1, 1979.

2C:52–30. Disclosure of Expungement Order

Except as otherwise provided in this chapter, any person who reveals to another the existence of an arrest, conviction or related legal proceeding with knowledge that the records and information pertaining thereto have been expunged or sealed is a disorderly person. Notwithstanding the provisions of section 2C:43–3, the maximum fine which can be imposed for violation of this section is $200.00.

L.1979, c. 178, § 137, eff. Sept. 1, 1979.

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2C:52-31. Limitation

Nothing provided in this chapter shall be interpreted to permit the expungement of records contained in the Controlled Dangerous Substances Registry created pursuant to P.L.1970, c. 227 (C. 26:2G–17 et seq.), or the registry created by the Administrative Office of the Courts pursuant to section 2C:43–21. L.1979, c. 178, § 138, eff. Sept. 1, 1979.

Source: C. 2A:85–22 (L.1973, c. 191, § 8).

2C:52-32. Construction

This chapter shall be construed with the primary objective of providing relief to the one-time offender who has led a life of rectitude and disassociated himself with unlawful activity, but not to create a system whereby periodic violators of the law or those who associate themselves with criminal activity have a regular means of expunging their police and criminal records. L.1979, c. 178, § 139, eff. Sept. 1, 1979.

Notes of Decisions

1. Juvenile delinquency

Adjudication of juvenile delinquency could not be expunged. State v. W. J. A., 173 N.J.Super. 19, 412 A.2d 1333 (1980).

* * *

CHAPTER 1A. EXAMINATION AND COPIES OF PUBLIC RECORDS [NEW]

Sec.

47:1A–1. Legislative findings.
47:1A–2. Public records; right of inspection; copies; fees.
47:1A–3. Records of investigations in progress.
47:1A–4. Proceedings to enforce right to inspect or copy.

Law Review Commentaries

Right to know law; survey of recent developments. (1978) 9 Seton Hall L. Rev. 397.

47:1A–1. Legislative findings

The Legislature finds and declares it to be the public policy of this State that public records shall be readily accessible for examination by the citizens of this State, with certain exceptions, for the protection of the public interest. L.1963, c. 73, § 1.

47:1A–2. Public records; right of inspection; copies; fees

Except as otherwise provided in this act or by any other statute, resolution of either or both houses of the Legislature, executive order of the Governor, rule of court, any Federal law, regulation or order, or by any regulation promulgated under the authority of any statute or executive order of

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the Governor, all records which are required by law to be made, maintained or kept on file by any board, body, agency, department, commission or official of the State or of any political subdivision thereof or by any public board, body, commission or authority created pursuant to law by the State or any of its political subdivisions, or by any official acting for or on behalf thereof (each of which is hereinafter referred to as the "custodian" thereof) shall, for the purposes of this act, be deemed to be public records. Every citizen of this State, during the regular business hours maintained by the custodian of any such records, shall have the right to inspect such records. Every citizen of this State shall also have the right, during such regular business hours and under the supervision of a representative of the custodian, to copy such records by hand, and shall also have the right to purchase copies of such records. Copies of records shall be made available upon the payment of such price as shall be established by law. If a price has not been established by law for copies of any records, the custodian of such records shall make and supply copies of such records upon the payment of the following fees which shall be based upon the total number of pages or parts thereof to be purchased without regard to the number of records being copied:

First page to tenth page	$0.50 per page,
Eleventh page to twentieth page	0.25 per page,
All pages over 20	0.10 per page,

If the custodian of any such records shall find that there is no risk of damage or mutilation of such records and that it would not be incompatible with the economic and efficient operation of the office and the transaction of public business therein, he may permit any citizen who is seeking to copy more than 100 pages of records to use his own photographic process, approved by the custodian, upon the payment of a reasonable fee, considering the equipment and the time involved, to be fixed by the custodian of not less than $5.00 or more than $25.00 per day. L.1963, c. 73, § 2.

47:1A–3. Records of investigations in progress

Notwithstanding the provisions of this act, where it shall appear that the record or records which are sought to be examined shall pertain to an investigation in progress by any such body, agency, commission, board, authority or official, the right of examination herein provided for may be denied if the inspection, copying or publication of such record or records shall be inimical to the public interest; provided, however, that this provision shall not be construed to prohibit any such body, agency, commission, board, authority or official from opening such record or records for public examination if not otherwise prohibited by law. L.1963, c. 73, § 3.

47:1A–4. Proceedings to enforce right to inspect or copy

Any such citizen of this State who has been or shall have been denied for any reason the right to inspect, copy or obtain a copy of any such record as provided in this act may apply to the Superior Court of New Jersey by a proceeding in lieu of prerogative writ for an order requiring the custodian of the record to afford inspection, the right to copy or to obtain a copy thereof, as provided in this act. L.1963, c. 73, § 4.

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	29-3-1			X
2. Privacy and Security Council				
3. Dissemination Regulations	CJA Dissem: 29-3-2			X
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	29-3-2			X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	14-2-1 28-2-3			X X
3.12 Authorizes to Private Sector	14-2-1			X
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies	28-2-3			X
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	29-10-5			X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies				
3.22 Authorizes to Private Sector				
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies	28-2-3 29-10-5			X X
3.25 Prohibits to Private Sector	29-10-5			X
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	29-10-5			X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	28-2-3 29-10-7.B			X X
3.32 Authorizes to Private Sector	29-10-7.B			X
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	29-10-8			X
5. Right to Challenge	29-10-8			X
6. Judicial Review of Challenged Information	29-10-8			X
7. Purging Non-Conviction Information	30-31-28			X
8. Purging Conviction Information				

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information	30-31-28			X
10. Sealing Conviction Information				
11. Removal of Disqualifications	30-31-28			X
12. Right to State Non-Existence of Record	30-31-28			X
13. Research Access	29-10-6.B			X
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	29-3-8			X
14.2 Auditing Requirements				
14.3 Other Accuracy/Completeness Requirements	29-3-1			X
15. Dedication				
16. Civil Remedies				
17. Criminal Penalties	14-2-3			X
18. Public Records	14-2-1			X
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security				
22.1 Physical (Building) Security				
22.2 Administrative Security	4-25-7	X		
22.3 Computer Security				
23. Transaction Logs				
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)	14-3-2 14-2-1			X X
27. FOIA (Excluding CJI)	29-10-4			X
28. Central State Repository	29-3-1			X

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New Mexico Statutes Annotated
Chapter 29

ARTICLE 3

Identification of Criminals

Sec.
29-3-1. New Mexico state police; identification and information.
29-3-2. New Mexico state police; cooperation; local and state.
29-3-3. New Mexico state police; cooperation; federal.
29-3-4. State agencies; cooperation.
29-3-5 to 29-3-7. Repealed.
29-3-8. Fingerprinting of persons arrested; disposition.
29-3-9. Instruction.

29-3-1. New Mexico state police; identification and information.

A. It shall be the duty of the New Mexico state police to install and maintain complete systems for the identification of criminals, including the fingerprint system and the modus operandi system. The New Mexico state police shall obtain from whatever source procurable, and shall file and preserve for record, such plates, photographs, outline pictures, fingerprints, measurements, descriptions, modus operandi statements and such other information about, concerning and relating to any and all persons who have been or who shall hereafter be convicted of a felony or who shall attempt to commit a felony within this state, or who are well-known and habitual criminals, or who have been convicted of any of the following felonies or misdemeanors: illegally carrying, concealing or possessing a pistol or any other dangerous weapon; buying or receiving stolen property; unlawful entry of a building; escaping or aiding an escape from prison; making or possessing a fraudulent or forged check or draft; petit larceny; and unlawfully possessing or distributing habit-forming narcotic drugs.

B. The New Mexico state police may also obtain like information concerning persons who have been convicted of violating any of the military, naval or criminal laws of the United States, or who have been convicted of a crime in any other state, country, district or province, which, if committed within this state, would be a felony.

C. The New Mexico state police shall make a complete and systematic record and index [of] all information obtained for the purpose of providing a convenient and expeditious method of consultation and comparison.

History: Laws 1935, ch. 149, § 4; 1941 Comp., § 40-301; 1953 Comp., § 39-3-1; Laws 1977, ch. 257, § 43; 1979, ch. 202, § 36.

The 1979 amendment substituted "New Mexico state police" for "technical services bureau" in the catchline, near the beginning of the second sentence in Subsection A and near the beginning of Subsections B and C, substituted "New Mexico state police" for "technical services bureau of the criminal justice support division, criminal justice department" near the beginning of Subsection A and deleted "of" following "record and index" near the middle of Subsection C.

Compiler's note. — Laws 1935, ch. 149, §§ 1 to 3, were superseded by the transfer of powers from the bureau of identification to the state police.

C.J.S. reference. — 24B C.J.S. Criminal Law § 2008.

29-3-2. New Mexico state police; cooperation; local and state.

The New Mexico state police shall cooperate with the respective sheriffs, constables, marshals, police and other peace officers of this state in the detection of crime and the apprehension of criminals throughout the state and shall, on the direction of the chief of the New Mexico state police, governor or attorney general, conduct such investigations as may be deemed necessary to obtain and secure evidence which may be considered necessary or essential for the conviction of alleged violators of the criminal laws of this state, and the

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chief is hereby authorized to assist any prosecuting attorney in the prosecution of any criminal case which may in his judgment require such cooperation. All expenses such as travel, meals and lodging involved in such assistance shall be paid from the court fund of the county in which the trial is held or to be held.

History: Laws 1935, ch. 149, § 5; 1941 Comp., § 40-302; 1953 Comp., § 39-3-2; Laws 1977, ch. 257, § 44; 1979, ch. 202, § 37.

The 1979 amendment inserted "New Mexico" preceding, and deleted "division" following, "state police" in the catchline and near the beginning of the section, substituted "chief of the New Mexico state police" for "state police director or the secretary of the criminal justice department" near the middle of the first sentence, substituted "chief" for "secretary of the criminal justice department" near the end of the first sentence and made other minor changes.

29-3-3. New Mexico state police; cooperation; federal.

It shall be the duty of the New Mexico state police and it is hereby granted the power to cooperate with agencies of other states and of the United States having similar powers to develop and carry on a complete interstate, national and international system of criminal identification and investigation, and also to furnish upon request any information in their possession concerning any person charged with crime to any court, district attorney or police officer or any peace officer of this state, or of any other state or the United States.

History: Laws 1935, ch. 149, § 6; 1941 Comp., § 40-303; 1953 Comp., § 39-3-3; Laws 1977, ch. 257, § 45; 1979, ch. 202, § 38.

The 1979 amendment inserted "New Mexico" preceding, and deleted "division and technical services bureau" following, "state police" in the catchline and near the beginning of the section, substituted "it is" for "they are" preceding "hereby granted" near the beginning of the section and made other minor changes.

29-3-4. State agencies; cooperation.

It shall be the duty of the university of New Mexico, the human services department, the health and environment department and all other state departments, bureaus, boards, commissions, institutions and officials, free of charge or reward, to cooperate with the law enforcement officers of the state and the New Mexico state police, and to render to them such services and assistance relative to microanalysis, handwriting, toxicology, chemistry, photography, medicine, ballistics and all other sciences and matters relating to or that would aid in controlling crime and the detection, apprehension, identification and prosecution of criminals.

History: Laws 1935, ch. 149, § 7; 1941 Comp., § 40-304; 1953 Comp., § 39-3-4; Laws 1977, ch. 257, § 46; 1978, ch. 3, § 1; 1979, ch. 202, § 39.

The 1978 amendment substituted "human services department" for "department of health and social services" and "the health and environment department" for "the department of hospitals and institutions" near the beginning of the section.

The 1979 amendment substituted "and the New Mexico state police" for "the technical services bureau and the state police division" near the middle of the section and made other minor changes.

Effective date. — Laws 1978, ch. 3, § 2, makes the act effective on March 31, 1978.

Emergency clause. — Laws 1978, ch. 3, § 3, makes the act effective immediately. Approved February 15, 1978.

29-3-5 to 29-3-7. Repealed.

Repeal. — Laws 1979, ch. 202, § 53, repeals 29-3-5 to 29-3-7 NMSA 1978, relating to supplies, quarters and reports of the technical services bureau of the criminal justice support division, criminal justice department, effective July 1, 1979.

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29-3-8. Fingerprinting of persons arrested; disposition.

A. Any person arrested for the commission of any criminal offense amounting to a felony under the laws of this state or any other jurisdiction shall be required by the arresting peace officer to make fingerprint impressions.

B. Any person arrested for the commission of any criminal offense not amounting to a felony but punishable by imprisonment for more than six months under the laws of this state or any political subdivision shall be required to make fingerprint impressions.

C. Fingerprint impressions shall be made pursuant to rules adopted by the New Mexico state police board, and all felony arrest fingerprints shall be made in duplicate, one copy shall be forwarded to the New Mexico state police and one copy shall be forwarded to the federal bureau of investigation in Washington, D.C.

D. One copy of the fingerprint impressions of each person arrested under the provisions of Subsection B of this section shall be forwarded to the New Mexico state police. A copy may be sent to the FBI in Washington, D.C., if:

(1) there is a question of identity;

(2) a check of FBI files is considered necessary for investigative purposes; or

(3) the individual is suspected of being a fugitive.

History: 1953 Comp., § 39-3-8, enacted by Laws 1978, ch. 87, § 1; 1979, ch. 202, § 40.

The 1979 amendment substituted "New Mexico state police board" for "criminal justice department" near the beginning of Subsection C, substituted "New Mexico state police" for "technical services bureau" near the end of Subsection C and at the end of the first sentence in Subsection D, substituted "Subsection B," for "Paragraph B," in the first sentence in Subsection D and made other minor changes.

Repeals and reenactments. — Laws 1977, ch. 364, § 1, repealed a former 39-3-8, 1953 Comp., relating to fingerprinting of persons arrested for felonies and disposition of prints, and enacted a new section 39-3-8, 1953 Comp. (29-3-8 NMSA 1978).

Laws 1978, ch. 87, § 1, repeals 39-3-8, 1953 Comp. (29-3-8 NMSA 1978), relating to fingerprinting of persons arrested and disposition, and enacts the above section.

Effective date. — Laws 1978, ch. 87, § 2, makes the act effective on March 31, 1978.

Emergency clause. — Laws 1978, ch. 87, § 3, makes the act effective immediately. Approved February 27, 1978.

29-3-9. Instruction.

The governor or the chief of the New Mexico state police may, when deemed necessary or advisable, detail and commission any member or members of the New Mexico state police to attend as a student any school of instruction, now or which may hereafter be established and operated by the United States or any of its agencies, having for its purpose the instruction and training of operators in crime detection and identification, investigation and apprehension of criminals. Such person or persons so detailed and commissioned shall, when they are members of the New Mexico state police, draw the same salaries and allowances as when on duty in this state and shall be deemed to be on leave of absence for such purpose. All other persons so detailed and commissioned for such purpose shall be paid such compensation and allowance as may be provided by law.

History: Laws 1935, ch. 149, § 13; 1941 Comp., § 40-309; 1953 Comp., § 39-3-9; Laws 1977, ch. 257, § 50; 1979, ch. 202, § 41.

The 1979 amendment deleted "Criminal justice department;" preceding "instruction" in the catchline, substituted "the chief of the New Mexico state police" for "secretary" near the beginning of the section, substituted "New Mexico state police" for "department" near the beginning of the first and second sentences and made other minor changes.

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ARTICLE 10

Arrest Record Information Act

Sec.
29-10-1. Short title.
29-10-2. Purpose of act.
29-10-3. Definitions.
29-10-4. Confidentiality of arrest records.
29-10-5. Exchange of information.
29-10-6. Access by individuals.
29-10-7. Application.
29-10-8. Review of arrest record information.

29-10-1. Short title.

This act [29-10-1 to 29-10-8 NMSA 1978] may be cited as the "Arrest Record Information Act."

History: 1953 Comp., § 39-10-1, enacted by Laws 1975, ch. 260, § 1.

Cross-references. — For right to inspect public records, see 14-2-1 NMSA 1978. For children's code, inspection of social and legal records, see 32-1-44 NMSA 1978.

Generally. — The Arrest Record Information Act may be viewed as establishing statutory exceptions to the fundamental right to inspect. It does so, however, in a rather conflicting manner, and it appears that virtually all arrest record information is subject to at least a limited or conditional disclosure. 1978 Op. Att'y Gen. No. 78-9.

29-10-2. Purpose of act.

The legislature finds and declares that the responsible exchange of complete and accurate information among law enforcement agencies is recognized as necessary and indispensable to effective law enforcement. Individual rights, however, may be infringed if information is inaccurate, incomplete or is disseminated irresponsibly. The Arrest Record Information Act [29-10-1 to 29-10-8 NMSA 1978] is for the purpose of protecting those rights.

History: 1953 Comp., § 39-10-2, enacted by Laws 1975, ch. 260, § 2.

Violation not limited. — The Arrest Record Information Act does not limit the violation of the act to any particular class of persons. 1975 Op. Att'y Gen. No. 75-37 (opinion superseded by 1978 Op. Att'y Gen. No. 78-9). See notes to 29-10-3 NMSA 1978.

29-10-3. Definitions.

As used in the Arrest Record Information Act [29-10-1 to 29-10-8 NMSA 1978]:

A. "arrest record information" means notations of the arrest or detention, or indictment or filing of information or other formal criminal charge against an individual made by a law enforcement agency which resulted in a negative disposition; and

B. "negative disposition" means that:

(1) criminal proceedings have been concluded and the defendant was found not guilty;

(2) a prosecutor has elected not to refer a matter for prosecution; or

(3) criminal proceedings have been indefinitely postponed, and includes but is not limited to acquittal, case continued without finding, charge dismissed, charge dismissed due to insanity or mental incompetence, charge still pending due to insanity or mental incompetence, nolle prosequi, deceased, deferred disposition, pardoned, extradition proceedings have been concluded and mistrial-defendant discharged.

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History: 1953 Comp., § 39-10-3, enacted by Laws 1975, ch. 260, § 3; 1977, ch. 339, § 1.

Section A includes both felony and misdemeanor arrest records. 1975 Op. Att'y Gen. No. 75-37 (opinion superseded by 1978 Op. Att'y Gen. No. 78-9).

Definition of "arrest record information" does not include investigative reports. 1978 Op. Att'y Gen. No. 78-9.

Application of statute. — The Arrest Record Information Act does not come into play until after the filing of a "formal criminal charge" or the "arrest" of an individual, followed by a "negative disposition" of the charges. 1978 Op. Att'y Gen. No. 78-9.

Only those notations of an arrest or detention or formal criminal charge filed by a law enforcement agency which result in dispositions which are included in Subsection B(1), (2) or (3) are subject to the confidentiality provisions of the Arrest Record Information Act. 1978 Op. Att'y Gen. No. 78-9.

Disclosure proper where no negative disposition results. — The records of an adult charged with an offense which does not result in a "negative disposition" would be disclosable, as those records would not constitute "arrest record information" as defined by this section. 1978 Op. Att'y Gen. No. 78-9.

What legislature intended by term "negative disposition" is a disposition which is either not favorable to the state, favorable to the individual charged or inconclusive. 1978 Op. Att'y Gen. No. 78-9.

29-10-4. Confidentiality of arrest records.

The arrest record information maintained by the state or any of its political subdivisions pertaining to any person charged with the commission of any crime shall be confidential and dissemination or the revealing the contents thereof, except as provided in the Arrest Record Information Act [29-10-1 to 29-10-8 NMSA 1978], is unlawful.

History: 1953 Comp., § 39-10-4, enacted by Laws 1975, ch. 260, § 4.

Cross-reference. — For crimes defined and classified, see 30-1-4 to 30-1-6 NMSA 1978.

Penalty provision repealed. — While this section still provides that violations of the Arrest Record Information Act are "unlawful," there are no longer any criminal sanctions for releasing arrest record information in violation of the provisions of the act, since 39-10-7, 1953 Comp., the penalty provision, was repealed by Laws 1977, ch. 339, § 6. 1978 Op. Att'y Gen. No. 78-9.

29-10-5. Exchange of information.

A law enforcement agency may disseminate arrest record information to a federal, state or local government law enforcement agency, provided that when such arrest record information is disseminated to a law enforcement agency situated outside this state, such information shall be accompanied by a statement substantially embodying the intent set forth in Section 29-10-4 NMSA 1978 of the Arrest Record Information Act [29-10-1 to 29-10-8 NMSA 1978]. Nothing in the Arrest Record Information Act prohibits direct access by the attorney general, district attorney or the courts to such information where it is deemed necessary in the performance of their functions under law. Nothing in the Arrest Record Information Act prohibits direct access by a law enforcement agency to automated wanted information pertaining to a person or to stolen property information.

History: 1953 Comp., § 39-10-5, enacted by Laws 1975, ch. 260, § 5; 1977, ch. 339, § 2.

29-10-6. Access by individuals.

A. Upon satisfactory verification of his identity, any individual may inspect, in person, through counsel or through his authorized agent, arrest record information maintained by [a] law enforcement agency concerning him.

B. Personnel assigned to contractual research for a state or federally approved criminal justice project shall be permitted access to arrest record information. Approval personnel shall not further disseminate such information except as statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable.

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History: 1953 Comp., § 39-10-6, enacted by Laws 1975, ch. 260, § 6; 1977, ch. 339, § 3.

29-10-7. Application.

A. The provisions of the Arrest Record Information Act [29-10-1 to 29-10-8 NMSA 1978] do not apply to criminal history record information contained in:

(1) posters, announcements or lists for identifying or apprehending fugitives or wanted persons;

(2) original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public, if such records are organized on a chronological basis;

(3) court records of public judicial proceedings;

(4) published court or administrative opinions or public judicial, administrative or legislative proceedings;

(5) records of traffic offenses and accident reports;

(6) announcements of executive clemency; and

(7) statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable.

B. Nothing in this act [29-10-1 to 29-10-8 NMSA 1978] prevents a law enforcement agency from disclosing to the public arrest record information related to the offense for which an adult individual is currently within the criminal justice system. Nor is a law enforcement agency prohibited from confirming prior arrest record information to members of the news media or any other person, upon specific inquiry as to whether a named individual was arrested, detained, indicted or whether an information or other formal charge was filed, on a specified date, if the arrest record information disclosed is based on data enumerated by Subsection A of this section.

History: 1953 Comp., § 39-10-8, enacted by Laws 1977, ch. 339, § 4.

Repeal and reenactment. — Laws 1977, ch. 339, § 4, repeals 39-10-8, 1953 Comp., relating to the application of the Arrest Record Information Act, and enacts the above section.

Information to be included in police blotter. — The following information may be appropriately included by a law enforcement agency in a police blotter or original record of entry: the name, physical description, place and date of birth, address and occupation of the individual arrested; the time and place of arrest; the offense for which the individual was arrested or detained; and the name of the arresting officer. This list should be interpreted as a minimum requirement but not to the exclusion of additional information which may presently appear on the initial records of entry or police blotters being used by some law enforcement agencies. 1975 Op. Att'y Gen. No. 75-37 (opinion superseded by 1978 Op. Att'y Gen. No. 78-9).

Repeal and reenactment broadened exemption. — In the repeal and reenactment of this section, the phrase "indexed chronologically" in Subsection A(2) became "compiled chronologically," thus removing the requirement that the records must be "indexed" to qualify as "original records of entry." The phrase "or long-standing custom" was added also, thereby legitimating a long-standing custom by which many law enforcement agencies had released information from police blotters and other such original records. 1978 Op. Att'y Gen. No. 78-9.

Meaning of "within the criminal justice system". — While the statute does not specify what is meant by "within the criminal justice system," the term appears to relate to the status of an adult who has been arrested or formally charged with a criminal offense until such time as there is a final "negative disposition." 1978 Op. Att'y Gen. No. 78-9.

29-10-8. Review of arrest record information.

A person who believes that arrest record information concerning him is inaccurate or incomplete shall, upon satisfactory verification of his identity, be entitled to review such information and obtain a copy of it for the purpose of challenge or correction. In the event a law enforcement agency refuses to correct challenged information to the satisfaction of the person to whom the inaccurate or incorrect information relates, the person shall be entitled to petition the district court to correct such information.

History: 1953 Comp., § 39-10-9, enacted by Laws 1977, ch. 339, § 5.

Repealing clause. — Laws 1977, ch. 339, § 6, repeals 39-10-7, 1953 Comp.

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Chapter 28

ARTICLE 2

Criminal Offender Employment Act

Sec.
28-2-1. Short title.
28-2-2. Purpose of act.
28-2-3. Employment eligibility determination.
28-2-4. Power to refuse, renew, suspend or revoke public employment or license.
28-2-5. Nonapplicability to law enforcement agencies.
28-2-6. Applicability.

28-2-1. Short title.

Sections 1 through 6 [28-2-1 to 28-2-6 NMSA 1978] of this act may be cited as the "Criminal Offender Employment Act."

History: 1953 Comp., § 41-24-1, enacted by Laws 1974, ch. 78, § 1.

28-2-2. Purpose of act.

The legislature finds that the public is best protected when criminal offenders or ex-convicts are given the opportunity to secure employment or to engage in a lawful trade, occupation or profession and that barriers to such employment should be removed to make rehabilitation feasible.

History: 1953 Comp., § 41-24-2, enacted by Laws 1974, ch. 78, § 2.

28-2-3. Employment eligibility determination.

A. Subject to the provisions of Subsection B of this section and Sections 3 [4] and 4 [5] [28-2-4, 28-2-5 NMSA 1978] of the Criminal Offender Employment Act, in determining eligibility for employment with the state or any of its political subdivisions or for a license, permit, certificate or other authority to engage in any regulated trade, business or profession, the board or other department or agency having jurisdiction may take into consideration the conviction, but such conviction shall not operate as an automatic bar to obtaining public employment or license or other authority to practice the trade, business or profession.

B. The following criminal records shall not be used, distributed or disseminated in connection with an application for any public employment, license or other authority:

(1) records of arrest not followed by a valid conviction; and

(2) misdemeanor convictions not involving moral turpitude.

History: 1953 Comp., § 41-24-3, enacted by Laws 1974, ch. 78, § 3.

Cross-reference. — For persons convicted of felonious or infamous crime ineligible for public office unless pardoned or restored to political rights, see 10-1-2 NMSA 1978.

Compiler's note. — The probable legislative intent was to refer to Laws 1974, ch. 78, §§ 4 and 5, as indicated by the brackets in Subsection A.

State board of education subject to act. — The state board of education is subject to the provisions of Criminal Offender Employment Act (COEA), because it is an agency which determines eligibility for employment with the state. Bertrand v. New Mexico State Bd. of Educ., 88 N.M. 611, 544 P.2d 1176 (Ct. App. 1975), cert. denied, 89 N.M. 5, 546 P.2d 70 (1976).

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28-2-4. Power to refuse, renew, suspend or revoke public employment or license.

A. Any board or other agency having jurisdiction over employment by the state or any of its political subdivisions or the practice of any trade, business or profession may refuse to grant or renew, or may suspend or revoke, any public employment or license or other authority to engage in the public employment, trade, business or profession for any one or any combination of the following causes:

(1) where the applicant, employee or licensee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction directly relates to the particular employment, trade, business or profession; or

(2) where the applicant, employee or licensee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction does not directly relate to the particular employment, trade, business or profession, if the board or other agency determines, after investigation, that the person so convicted has not been sufficiently rehabilitated to warrant the public trust.

B. The board or other agency shall explicitly state in writing the reasons for a decision which prohibits the person from engaging in the employment, trade, business or profession, if the decision is based in whole or part on conviction of any crime described in Paragraph (1) of Subsection A of this section. Completion of probation or parole supervision, or of a period of three years after final discharge or release from any term of imprisonment without any subsequent conviction, shall create a presumption of sufficient rehabilitation for purposes of Paragraph (2) of Subsection A of this section.

History: 1953 Comp., § 41-24-4, enacted by Laws 1974, ch. 78, § 4.

Meaning of rehabilitation. — While "rehabilitation" is not defined in this section (although the statute does create a presumption of rehabilitation after completion of parole, or after a certain period has elapsed after release from prison) its dictionary definition is to restore a condition of good health, ability to work or the like. Bertrand v. New Mexico State Bd. of Educ., 88 N.M. 611, 544 P.2d 1176 (Ct. App. 1975), cert. denied, 89 N.M. 5, 546 P.2d 70 (1976).

Where court accepted board rehabilitation decision. — Probative evidence of rehabilitation of a teacher who was on one year's probation for one count of distribution of marijuana included her conscientious and successful performance at her job and the parents' perception of her as a person with whom they would trust their children; but evidence that she had become angry when her probation officer would not let her see her file, made a derogatory comment about the laws and "narcs," told a student who asked her about drugs that he could get in some trouble because of some bad laws, but for him to do what he wanted, was probative of what the board could conclude was a poor attitude towards criminal offenses for one who was a teacher, and since the state board members spoke to her at some length themselves and were able to draw their own impressions of her progress towards rehabilitation, the appellate court would not substitute its judgment for that of the board. Bertrand v. New Mexico State Bd. of Educ., 88 N.M. 611, 544 P.2d 1176 (Ct. App. 1975), cert. denied, 89 N.M. 5, 546 P.2d 70 (1976).

Writing requirement explained. — When a decision is made on grounds that a criminal conviction directly relates to a person's profession, the reasons for such a decision must be explicitly stated in writing. It is not sufficient to merely recite the language of the statute, but rather the "reasons" for the conclusion that there is a direct relation must be given, especially so that a reviewing body may know the reasons for the administrative body's conclusion; and if the conviction of a crime is to operate as other than an automatic bar to employment, the administrative agencies must explain what they perceive the detrimental effect of employment to be. Bertrand v. New Mexico State Bd. of Educ., 88 N.M. 611, 544 P.2d 1176 (Ct. App. 1975), cert. denied, 89 N.M. 5, 546 P.2d 70 (1976).

Knowledge of public record not imputed to estop dismissal. — Where the local school board did not have knowledge of a teacher's conviction until approached by her probation officer, although it was a matter of public record, the court of appeals declined to impute this knowledge to the board so as to estop it from dismissing her. Bertrand v. New Mexico State Bd. of Educ., 88 N.M. 611, 544 P.2d 1176 (Ct. App. 1975), cert. denied, 89 N.M. 5, 546 P.2d 70 (1976).

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28-2-5. Nonapplicability to law enforcement agencies.

The Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] is not applicable to any law enforcement agency; however, nothing herein shall be construed to preclude a law enforcement agency in its discretion from adopting the policy set forth herein.

History: 1953 Comp., § 41-24-5, enacted by Laws 1974, ch. 78, § 5.

28-2-6. Applicability.

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] relating to any board or other agency which has jurisdiction over the practice of any trade, business or profession apply to authorities made subject to its coverage by law, or by any such authorities' rules or regulations if permitted by law.

History: 1953 Comp., § 41-24-6, enacted by Laws 1974, ch. 78, § 6.

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Chapter 14

ARTICLE 2

Inspection of Public Records

Sec.
14-2-1. Right to inspect public records; exceptions.
14-2-2. Officers to provide opportunity and facilities for inspection.
14-2-3. Penalties for violation of act.

14-2-1. Right to inspect public records; exceptions.

Every citizen of this state has a right to inspect any public records of this state except:

A. records pertaining to physical or mental examinations and medical treatment of persons confined to any institutions;

B. letters of reference concerning employment, licensing or permits;

C. letters or memorandums which are matters of opinion in personnel files or students' cumulative files; and

D. as otherwise provided by law.

History: 1941 Comp., § 13-501, enacted by Laws 1947, ch. 130, § 1; 1953 Comp., § 71-5-1; Laws 1973, ch. 271, § 1.

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14-2-2. [Officers to provide opportunity and facilities for inspection.]

All officers having the custody of any state, county, school, city or town records in this state shall furnish proper and reasonable opportunities for the inspection and examination of all the records requested of their respective offices and reasonable facilities for making memoranda abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them for any lawful purpose.

History: 1941 Comp., § 13-502, enacted by Laws 1947, ch. 130, § 2; 1953 Comp., § 71-5-2.

Purpose and intent. — The legislature has clearly and unequivocally indicated that public records are to be made public with the exception of certain confidential information and except as otherwise provided by law. 1957-58 Op. Att'y Gen. No. 58-197. See 14-2-1 NMSA 1978 as to right of inspection.

Term "officer" as employed in this section, although having application to superintendents or administrative officials of school systems, does not apply to school teachers, school nurses or other school employees. 1961-62 Op. Att'y Gen. No. 61-137.

Right to make copies. — The right to inspect or examine public records commonly includes the right of making copies thereof as the right to inspect would be valueless without this correlative right. 1959-60 Op. Att'y Gen. No. 59-170.

It is permissible for an individual or a company such as an abstractor to photocopy voter registrations in the offices of the county clerks so long as adequate precautions are taken to insure the integrity of the records and to preserve their availability for inspection by others. 1959-60 Op. Att'y Gen. No. 59-170.

Subject to reasonable restrictions and conditions, etc. — The right to inspect public records commonly carries with it the right to make copies thereof, subject, however, to reasonable restrictions and conditions imposed as to their use, reasonable regulations as to appropriate times when and places where they may be inspected and copied and such reasonable supervision by the custodian thereof as may be necessary for their safety and as will secure equal opportunity for all to inspect and copy them. Ortiz v. Jaramillo, 82 N.M. 445, 483 P.2d 500 (1971).

But charges not to be imposed. — A charge of $25.00 per month may not be imposed by counties upon abstract and title companies for such facilities as lights, telephone and janitorial services to reimburse the counties therefor in connection with abstract and title companies inspecting and copying public records, because this practice amounts to a denial of the right to inspect records. 1957-58 Op. Att'y Gen. No. 57-102.

Public's right to inspection is not absolute. 1969 Op. Att'y Gen. No. 69-89.

Section does not require agencies furnishing information to abstract and copy records themselves. 1969 Op. Att'y Gen. No. 69-89.

County fair board records subject to inspection. — Since the legislature has specifically granted counties the authority to conduct county fairs, a county fair board is an arm of the county and its records are county records which are subject to inspection as provided in 14-2-1 NMSA 1978 and this section. 1964 Op. Att'y Gen. No. 64-109.

Privilege of inquiry as to faculty salary matters must be suspended until the board of regents reaches its final conclusion, i.e., the culmination of the contract between the board and the individual. Sanchez v. Board of Regents of E.N.M. Univ., 82 N.M. 672, 486 P.2d 607 (1971).

Thought processes, or the offer of a contract, are not such a public record as would require public inspection. Sanchez v. Board of Regents of E.N.M. Univ., 82 N.M. 672, 486 P.2d 608 (1971).

Right to inspect records of the board of regents of a state university on the subject of salary contract negotiations before the task was completed should be denied. Sanchez v. Board of Regents of E.N.M. Univ., 82 N.M. 672, 486 P.2d 608 (1971).

14-2-3. [Penalties for violation of act.]

If any officer having the custody of any state, county, school, city or town records in this state shall refuse to any citizen of this state the right to inspect any public records of this state, as provided in this act [14-2-1 to 14-2-3 NMSA 1978], such officer shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than two hundred and fifty dollars ($250.00) nor more than five hundred dollars ($500.00), or be sentenced to not less than sixty (60) days nor more than six (6) months in jail, or both such fine and imprisonment for each separate violation.

History: 1941 Comp., § 13-503, enacted by Laws 1947, ch. 130, § 3; 1953 Comp., § 71-5-3.

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ARTICLE 3

Public Records

Sec.

14-3-1. Short title.
14-3-2. Definitions.
14-3-3. State commission of public records; creation.
14-3-4. Duties and powers of commission.
14-3-5. Gifts, donations and loans.
14-3-6. Administrator; duties.
14-3-7. Inspection and survey of public records.
14-3-8. Records center.
14-3-9. Disposition of public records.
14-3-10. Disagreement as to value of records.
14-3-11. Destruction of records.
14-3-12. Transfer of records upon termination of state agencies.
14-3-13. Protection of records.
14-3-14. Advisory groups.
14-3-15. Reproduction on film; evidence; review, inventory and approval of systems.
14-3-16. Attorney general may replevin state records.
14-3-17. Approval of existing state agency systems.
14-3-18. County and municipal records.
14-3-19. Storage equipment, supplies and materials; microfilm services and supplies; purchase by state records commission for resale.
14-3-20. Interstate compacts; filing; index.
14-3-21. State publications; manuals of procedure; rules; reports; uniform style and form.
14-3-22. Public policy on certain publications; state commission of public records duties.
14-3-23. Manuals of procedure; preparation by state agencies; review by state records administrator; publication.
14-3-24. State publications for sale or issue by state agencies; listing by state records administrator.
14-3-25. Personal files, records and documents of elected state officials; placing in state archives by the state records administrator.

14-3-1. Short title.

This act [14-3-1 to 14-3-16, 14-3-18 NMSA 1978] may be cited as the "Public Records Act."

History: 1953 Comp., § 71-6-1, enacted by Laws 1959, ch. 245, § 1.

Cross-reference. — As to Public Health Act records being confidential, see 24-1-20 NMSA 1978.

14-3-2. Definitions.

As used in the Public Records Act [14-3-1 to 14-3-16, 14-3-18 NMSA 1978]:

A. "commission" means the state commission of public records;

B. "administrator" means the state records administrator;

C. "public records" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein. Library or museum material of the state library, state institutions and state museums, extra copies of documents preserved only for convenience of reference and stocks of publications and processed documents are not included;

D. "agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico;

E. "records center" means the central records depository which is the principal state facility for the storage, disposal, allocation or use of noncurrent records of agencies, or materials obtained from other sources; and

F. "microphotography system" means all microphotography equipment, services and supplies.

History: 1953 Comp., § 71-6-2, enacted by Laws 1959, ch. 245, § 2; 1963, ch. 186, § 1; 1977, ch. 301, § 1.

The 1977 amendment added Subsection F.

Term "public records" in this section includes the records of various public officials as that term is used in the Inspection of Public Records Act, 14-2-1 to 14-2-3 NMSA 1978, being those "public records" which are necessary or incidental to fulfilling the public officer's duties imposed upon his office by operation of law. 1969 Op. Att'y Gen. No. 69-139.

In order to be considered a "public record," an item must have some continuing significance or importance. There must be some purpose or reason for its preservation. Therefore, general correspondence files

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30-31-28. Conditional discharge for possession as first offense.

A. If any person who has not previously been convicted of violating the laws of any state or any laws of the United States relating to narcotic drugs, marijuana, hallucinogenic or depressant or stimulant substances, is found guilty of a violation of Section 23 [30-31-23 NMSA 1978], after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of the person, defer further proceedings and place him on probation upon reasonable conditions and for a period, not to exceed one year, as the court may prescribe.

B. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against the person and discharge him from probation before the expiration of the maximum period prescribed from the person's probation.

C. If during the period of his probation the person does not violate any of the conditions of the probation, then upon expiration of the period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt, but a nonpublic record shall be retained by the attorney general solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, the person qualifies under this section. A discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the penalties prescribed under this section for second or subsequent convictions or for any other purpose. Discharge and dismissal under this section may occur only once with respect to any person.

D. Upon the dismissal of a person and discharge of the proceedings against him under this section, a person, if he was not over eighteen years of age at the time of the offense, may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, trial, finding or plea of guilty, and dismissal and discharge pursuant to this section except nonpublic records filed with the attorney general. If the court determines, after hearing, that the person was dismissed and the proceedings against him discharged and that he was not over eighteen years of age at the time of the offense, it shall enter the order. The effect of the order shall be to restore the person, in the contemplation of the law, to the status he occupied before the arrest or indictment or information. No person in whose behalf an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

History: 1953 Comp., § 54-11-28, enacted by Laws 1972, ch. 84, § 28.

NEW YORK

Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	Ex Law Sect. 837.8	X		
2. Privacy and Security Council				
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	CPL 160.30	X		
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	Corr Law Sect. 752	X		
3.12 Authorizes to Private Sector	Corr Law Sect. 752	X		
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	CPL 160.30	X		
3.21 Authorizes to Govt. Non-Criminal Justice Agencies				
3.22 Authorizes to Private Sector				
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	CPL 160.30	X		
3.31 Authorizes to Govt. Non-Criminal Justice Agencies				
3.32 Authorizes to Private Sector				
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy				
5. Right to Challenge				
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information	CPL 160.50			X
8. Purging Conviction Information	CPL 160.55			X

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information	CPL 170.56	X		
10. Sealing Conviction Information	CPL 160.50 CPL 160.55			X X
11. Removal of Disqualifications	CPL 160.60 CPL 170.56	X		
12. Right to State Non-Existence of Record	160.60	X		
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	CPL 160.20; Exec. Law Sect. 837-4	X		
14.2 Auditing Requirements				
14.3 Other Accuracy/Completeness Requirements				
15. Dedication				
16. Civil Remedies	Corr Law Sect. 755	X		
17. Criminal Penalties				
18. Public Records	Pub Off Law Sect. 87			
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security	Ex Law Sect. 837	X		
22.1 Physical (Building) Security				
22.2 Administrative Security				
22.3 Computer Security				
23. Transaction Logs				
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)				
27. FOIA (Excluding CJI)				
28. Central State Repository	Ex Law Sect. 836, 837.6	X		

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New York Criminal Procedure Law

§ 160.50 Order upon termination of criminal action in favor of the accused

1. Upon the termination of a criminal action or proceeding against a person in favor of such person, as defined in subdivision two of this section, unless the district attorney upon motion with not less than five days notice to such person or his attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise, or the court on its own motion with not less than five days notice to such person or his attorney determines that the interests of justice require otherwise and states the reasons for such determination on the record, the court wherein such criminal action or proceeding was terminated shall enter an order, which shall immediately be served by the clerk of the court upon the commissioner of the division of criminal justice services and upon the heads of all police departments and other law enforcement agencies having copies thereof, directing that:

(a) every photograph of such person and photographic plate or proof, and all palmprints and fingerprints taken or made of such person pursuant to the provisions of this article in regard to the action or proceeding terminated, except a dismissal pursuant to section 170.56 or 210.46 of this chapter, and all duplicates and copies thereof, shall forthwith be returned to such person, or to the attorney who represented him at the time of the termination of the action or proceeding, at the address given by such person or attorney during the action or proceeding, by the division of criminal justice services and by any police department or law enforcement agency having any such photograph, photographic plate or proof, palmprint or fingerprints in its possession or under its control;

(b) any police department or law enforcement agency, including the division of criminal justice services, which transmitted or otherwise forwarded to any agency of the United States or of any other state or of any other jurisdiction outside the state of New York copies of any such photographs, photographic plates or proofs, palmprints and fingerprints, including those relating to actions or proceedings which were dismissed pursuant to section 170.56 or 210.46 of this chapter, shall forthwith formally request in writing that all such copies be returned to the police department or law enforcement agency which transmitted or forwarded them, and upon such return such department or agency shall return them as provided herein, except that those relating to dismissals pursuant to section 170.56 or 210.46 of this chapter shall not be returned by such department or agency;

(c) all official records and papers, including judgments and orders of a court but not including published court decisions or opinions or records and briefs on appeal, relating to the arrest or prosecution, including all duplicates and copies thereof, on file with the division of criminal justice services, any court, police agency, or prosecutor's office be sealed and not made available to any person or public or private agency; and

(d) such records shall be made available to the person accused or to such person's designated agent, and shall be made available to (i) a prosecutor in any proceeding in which the accused has moved for an order pursuant to section 170.56 or 210.46 of this chapter, or (ii) a law enforcement agency upon ex parte motion in any superior court, if such agency demonstrates to the satisfaction of the court that justice requires that such records be made available to it, or (iii) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the accused has made application for such a license.

2. For the purposes of subdivision one of this section, a criminal action or proceeding against a person shall be considered terminated in favor of such person where:

(a) an order dismissing the entire accusatory instrument against such person pursuant to article four hundred seventy was entered; or

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(b) an order to dismiss the entire accusatory instrument against such person pursuant to section 170.30, 170.50, 170.55, 170.56, 170.75, 180.70, 210.20 or 210.46 of this chapter or section 81.25 of the mental hygiene law was entered or deemed entered and the people have not appealed from such order or the determination of an appeal or appeals by the people from such order has been against the people; or

(c) a verdict of complete acquittal was made pursuant to section 330.10 of this chapter; or

(d) a trial order of dismissal of the entire accusatory instrument against such person pursuant to section 290.10 or 360.40 of this chapter was entered and the people have not appealed from such order or the determination of an appeal or appeals by the people from such order has been against the people; or

(e) an order setting aside a verdict pursuant to section 330.30 or 370.10 of this chapter was entered and the people have not appealed from such order or the determination of an appeal or appeals by the people from such order has been against the people and no new trial has been ordered; or

(f) an order vacating a judgment pursuant to section 440.10 of this chapter was entered and the people have not appealed from such order or the determination of an appeal or appeals by the people from such order has been against the people, and no new trial has been ordered; or

(g) an order of discharge pursuant to article seventy of the civil practice law and rules was entered on a ground which invalidates the conviction and the people have not appealed from such order or the determination of an appeal or appeals by the people from such order has been against the people; or

(h) where all charges against such person are dismissed pursuant to section 190.75 of this chapter. In such event, the clerk of the court which empaneled the grand jury shall serve a certification of such disposition upon the division of criminal justice services and upon the appropriate police department or law enforcement agency which upon receipt thereof, shall comply with the provisions of paragraphs (a), (b), (c) and (d) of subdivision one of this section in the same manner as is required thereunder with respect to an order of a court entered pursuant to said subdivision one; or

(i) prior to the filing of an accusatory instrument in a local criminal court against such person, the prosecutor elects not to prosecute such person. In such event, the prosecutor shall serve a certification of such disposition upon the division of criminal justice services and upon the appropriate police department or law enforcement agency which, upon receipt thereof, shall comply with the provisions of paragraphs (a), (b), (c) and (d) of subdivision one of this section in the same manner as is required thereunder with respect to an order of a court entered pursuant to said subdivision one.

(j) following the arrest of such person, the arresting police agency, prior to the filing of an accusatory instrument in a local criminal court but subsequent to the forwarding of a copy of the fingerprints of such person to the division of criminal justice services, elects not to proceed further. In such event, the head of the arresting police agency shall serve a certification of such disposition upon the division of criminal justice services which, upon receipt thereof, shall comply with the provisions of paragraphs (a), (b), (c) and (d) of subdivision one of this section in the same manner as is required thereunder with respect to an order of a court entered pursuant to said subdivision one.

(k)(i) The accusatory instrument alleged a violation of article two hundred twenty or section 240.36 of the penal law, prior to the taking effect of article two hundred twenty-one of the penal law, or a violation of article two hundred twenty-one of the penal law; (ii) the sole controlled substance involved is marijuana; (iii) the conviction was only for a violation or violations; and (iv) at least three years have passed since the offense occurred.

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3. A person in whose favor a criminal action or proceeding was terminated, as defined in paragraph (a) through (h) of subdivision two of this section, prior to the effective date of this section, may upon motion apply to the court in which such termination occurred, upon not less than twenty days notice to the district attorney, for an order granting to such person the relief set forth in subdivision one of this section, and such order shall be granted unless the district attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise. A person in whose favor a criminal action or proceeding was terminated, as defined in paragraph (i) or (j) of subdivision two of this section, prior to the effective date of this section, may apply to the appropriate prosecutor or police agency for a certification as described in said paragraph (i) or (j) granting to such person the relief set forth therein, and such certification shall be granted by such prosecutor or police agency.

Added L.1976, c. 877, § 1; amended L.1977, c. 835, §§ 1, 2; L.1977, c. 905, § 1; L.1980, c. 192, § 2.

* * * * *

§ 160.55 Order upon termination of criminal action by conviction for noncriminal offense

1. Upon the termination of a criminal action or proceeding against a person by the conviction of such person of a traffic infraction or a violation, other than a violation of loitering as described in paragraph (d) or (e) of subdivision one of section 160.10 of this chapter, unless the district attorney upon motion with not less than five days notice to such person or his attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise, or the court on its own motion with not less than five days notice to such person or his attorney determines that the interests of justice require otherwise and states the reasons for such determination on the record, the court wherein such criminal action or proceeding was terminated shall enter an order, which shall immediately be served by the clerk of the court upon the commissioner of the division of criminal justice services and upon the heads of all police departments and other law enforcement agencies having copies thereof, directing that:

(a) every photograph of such person and photographic plate or proof, and all palmprints and fingerprints taken or made of such person pursuant to the provisions of this article in regard to the action or proceeding terminated, and all duplicates and copies thereof, shall forthwith be returned to such person, or to the attorney who represented him at the time of the termination of the action or proceeding, at the address given by such person or attorney during the action or proceeding, by the division of criminal justice services and by any police department or law enforcement agency having any such photograph, photographic plate or proof, palmprints or fingerprints in its possession or under its control;

(b) any police department or law enforcement agency, including the division of criminal justice services, which transmitted or otherwise forwarded to any agency of the United States or of any other state or of any other jurisdiction outside the state of New York copies of any such photographs, photographic plates or proofs, palmprints and fingerprints, shall forthwith formally request in writing that all such copies be returned to the police department or law enforcement agency which transmitted or forwarded them, and upon such return such department or agency shall return them as provided herein;

(c) all official records and papers relating to the arrest or prosecution, including all duplicates and copies thereof, on file with the division of criminal justice services shall be sealed and not made available to any person or public or private agency; and

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(d) the records referred to in paragraph (c) of this subdivision shall be made available to the person accused or to such person's designated agent, and shall be made available to (i) a prosecutor in any proceeding in which the accused has moved for an order pursuant to section 170.56 or 210.46 of this chapter, or (ii) a law enforcement agency upon ex parte motion in any superior court, if such agency demonstrates to the satisfaction of the court that justice requires that such records be made available to it, or (iii) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the accused has made application for such a license.

2. A person against whom a criminal action or proceeding was terminated by such person's conviction of a traffic infraction or violation other than a violation of loitering as described in paragraph (d) or (e) of subdivision one of section 160.10 of this chapter, or of a traffic infraction prior to the effective date of this section, may upon motion apply to the court in which such termination occurred, upon not less than twenty days notice to the district attorney, for an order granting to such person the relief set forth in subdivision one of this section, and such order shall be granted unless the district attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise.

3. This section shall not apply to an action terminated in a manner described in paragraph (k) of subdivision two of section 160.50 of this chapter.

Added L.1980, c. 192, § 1.

Effective Date. Section effective Sept. 1, 1980, pursuant to L.1980, c. 192, § 3.

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	114-10.1.C 114-12-15	X X		
2. Privacy and Security Council				
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	114-10.1 114-19	X X		
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	114-10.1 114-19	X X		
3.12 Authorizes to Private Sector	114-10.1	X		
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	114-10.1 114-19	X X		
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	114-10.1 114-19	X X		
3.22 Authorizes to Private Sector	114-10	X		
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	114-10.1 114-19	X X		
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	114-10.1 114-19	X X		
3.32 Authorizes to Private Sector	114-10.1	X		
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes	Reg. 0808		X	
4.3 Right to Inspect and Obtain Copy	Reg. 0808		X	
5. Right to Challenge	Reg. 0808		X	
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information	15-224			X
8. Purging Conviction Information	15-223 90-96	X	X	

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information				
11. Removal of Disqualifications	90-96 15-223 15-224	X	X	X
12. Right to State Non-Existence of Record	15-223 15-224 90-96	X	X	X
13. Research Access	114-10.1 Reg. .0202	X		
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements				
14.2 Auditing Requirements				
14.3 Other Accuracy/Completeness Requirements				
15. Dedication				
16. Civil Remedies				
17. Criminal Penalties				
18. Public Records	132-1	X		
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security				
22.1 Physical (Building) Security				
22.2 Administrative Security				
22.3 Computer Security				
23. Transaction Logs				
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)				
27. FOIA (Excluding CJI)				
28. Central State Repository	114-10 114-19	X X		

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North Carolina General Statutes

§ 15-224. Expunction of records when charges are dismissed or there are findings of not guilty. — Except as otherwise provided in G.S. 90-96, if any person is charged with a crime, either a misdemeanor or a felony, and the charge is dismissed, or a finding of not guilty is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that at the time any of the proceedings against him occurred the person had not attained the age of 18 years and had not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial. The clerk shall send a copy of the expunction order to any public official known to be a custodian of such entries. (1979, c. 61.)

North Carolina Administrative Codes, 12 NCAC 4C

.0202 RESEARCH USE AND ACCESS OF COMPUTERIZED CRIMINAL INFORMATION

(a) Researchers who wish to use criminal justice information maintained by the Police Information Network shall first submit to the Director of the Police Information Network a completed research design that guarantees adequate protection of security and privacy. Authorization to use criminal justice information may be given after the Director of the Police Information Network has approved the research design.

(b) The Police Information Network Advisory Policy Board may be consulted for recommendation prior to the Director of the Police Information Network authorizing a particular research program agency access to computerized criminal information.

(c) In making a determination, the Director and the advisory policy board must insure that an individual's rights to privacy will not be violated by the research program; that the program is calculated to prevent injury or embarrassment to any individual, and that the results outweigh any disadvantages that are created for the North Carolina criminal justice system if the research information is provided.

History Note: Statutory Authority G. S. 114-10; 114-10.1;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Amended Eff. November 1, 1980.

.0203 LIMITS ON CRIMINAL JUSTICE RESEARCH

(a) Research designs must preserve the anonymity of all subjects. The following requirements shall be applicable to all such programs of research and each criminal justice agency and researcher shall be responsible for their full and prompt implementation.

(b) In no case shall computerized information furnished for purposes of any program of research be used to the detriment of person(s) to whom such information relates.

(c) In no case may computerized information furnished for purposes of any program of research be used for any other purpose; nor may such information be used for any program of research other than that authorized by the Director of the Police Information Network.

(d) Each participant and employee of every program of research authorized access to computerized information shall, prior to having such access, fully and completely execute a non-disclosure agreement with the Director of the Police Information Network.

(e) In every case the authorization for access to computerized information shall assure the criminal justice agency and the Director of the Police Information Network full and complete rights to monitor the program of research to assure compliance with this Regulation. Such monitoring rights shall include the right of the Police Information Network staff and the Police Information Network Advisory Policy Board to audit and review such monitoring activities and also to pursue its own monitoring activities.

(f) Each program of research shall preserve the right of the Police Information Network and the criminal justice agency involved to examine and verify the data generated as the result of the program, and if a material error or ommission is found to have occurred, to order that the data not be released for any purpose unless corrected to the satisfaction of the agency and the Police Information Network.

History Note: Statutory Authority G. S. 114-10; 114-10.1;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Amended Eff. November 1, 1980.

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	12-60-17	X		
2. Privacy and Security Council				
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	12-60-15	X		
3.11 Authorizes to Govt. Non-Criminal Justice Agencies				
3.12 Authorizes to Private Sector				
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	12-60-15	X		
3.21 Authorizes to Govt. Non-Criminal Justice Agencies				
3.22 Authorizes to Private Sector				
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	12-60-15	X		
3.31 Authorizes to Govt. Non-Criminal Justice Agencies				
3.32 Authorizes to Private Sector				
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy				
5. Right to Challenge				
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information				
8. Purging Conviction Information				

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information	12-53-18			X
10. Sealing Conviction Information				
11. Removal of Disqualifications	12-53-18			X
12. Right to State Non-Existence of Record				
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	12-60-11 12-60-10	X X		
14.2 Auditing Requirements				
14.3 Other Accuracy/Completeness Requirements	12-60-11 12-60-13	X X		
15. Dedication				
16. Civil Remedies				
17. Criminal Penalties				
18. Public Records	44-04-18	X		
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security				
22.1 Physical (Building) Security				
22.2 Administrative Security				
22.3 Computer Security				
23. Transaction Logs				
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)				
27. FOIA (Excluding CJI)				
28. Central State Repository	12-60-01,07,.10	X		

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North Dakota Century Code

12-53-18. Records on discharge from probation.—Every defendant who has fulfilled the conditions of his probation for the entire period thereof, or who shall have been discharged from probation prior to the termination of the period thereof, may at any time be permitted in the discretion of the court to withdraw his plea of guilty. The court may in its discretion set aside the verdict of guilty; and in either case, the court may dismiss the information or indictment against such defendant, who shall then be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted. The clerk of the district court shall file all papers, including the findings and final orders in proceedings had hereunder, and shall note the date of filing on the papers. The records and papers shall be subject to examination by said clerk, the judges of the court, the juvenile commissioner, and the state's attorney. Others may examine such records and papers only upon the written order of one of the district judges.

Source: S. L. 1947, ch. 134, § 6; R. C. 1943, 1957 Supp., § 12-5318.

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	109.57 109.57.1	X		
2. Privacy and Security Council				
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	109.57(A)	X		
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	109.57(D)	X		
3.12 Authorizes to Private Sector	109.57(D)	X		
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	109.57(A)	X		
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	109.57(D)	X		
3.22 Authorizes to Private Sector	109.57(D)	X		
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	109.57(A)	X		
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	109.57(D)	X		
3.32 Authorizes to Private Sector	109.57(D)	X		
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	149.43	X		
5. Right to Challenge				
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information	2951.04.1	X		
8. Purging Conviction Information	2151.35.8 2953.32	X		X

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information	2151.35.8 2953.32	X X		
11. Removal of Disqualifications	2151.35.8 2951.04.1 2953.33	 X X		X
12. Right to State Non-Existence of Record	2953.33	X		
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	109.61 109.57(A)	X X		
14.2 Auditing Requirements				
14.3 Other Accuracy/Completeness Requirements	109.57(A) 1347.05	X X		
15. Dedication				
16. Civil Remedies	149.99 1347.10	X X		
17. Criminal Penalties	1347.99 2953.35	X X		
18. Public Records	149.43	X		
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security				
22.1 Physical (Building) Security	1347.05	X		
22.2 Administrative Security	1347.05	X		
22.3 Computer Security	1347.05	X		
23. Transaction Logs				
24. Training Employees				
25. Listing of Information Systems	1347.03	X		
26. FOIA (Including CJI)	149.43	X		
27. FOIA (Excluding CJI)	1347.04 149.43	X X		
28. Central State Repository	109.57(C)	X		

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[§ 2151.35.8] § 2151.358 Expungement of record.

Any person who has been adjudicated a delinquent or unruly child, may apply to the court for an expungement of his record, or the court may initiate expungement proceedings. Such application shall be filed no sooner than two years after the termination of any order made by the court, or two years after his unconditional discharge from the Ohio youth commission or other institution or facility to which he may have been committed.

Notice of the hearing on such application shall be given to the prosecuting attorney.

If the court finds that the rehabilitation of the person has been attained to a satisfactory degree, the court may order the records sealed and the proceedings in such case shall be deemed never to have occurred. All index references shall be deleted and the person and the court may properly reply that no record exists with respect to such person upon any inquiry in the matter. Inspection of the records included in the order may thereafter be permitted by the court only upon application by the person who is the subject of the records and only to such persons as are named in his application.

The judgment rendered by the court under this chapter shall not impose any of the civil disabilities ordinarily imposed by conviction of a crime in that the child is not a criminal by reason of such adjudication, nor shall any child be charged or convicted of a crime in any court except as provided by this chapter. The disposition of a child under the judgment rendered or any evidence given in court is not admissible as evidence against the child in any other case or proceeding in any other court, except that the judgment rendered and the disposition of such child may be considered by any court only as to the matter of sentence or to the granting of probation. Such disposition or evidence shall not operate to disqualify a child in any future civil service examination, appointment, or application.

§ 2151.18 Records; annual report; copies for distribution.

The juvenile court shall maintain records of all official cases brought before it, including an appearance docket, a journal, and a cashbook. The court shall maintain a separate docket for traffic offenses, in which case, all traffic cases shall be recorded thereon instead of on the general appearance docket. The parents of any child affected, if living, or if deceased, the nearest of kin, may inspect such records, either in person or by counsel during the hours in which such court is open.

Not later than June of each year, the court shall prepare an annual report covering the preceding calendar year showing the number and kinds of cases that have come before it, the disposition thereof, and such other data pertaining to the work of the court as the juvenile judge directs or as the department of public welfare requests. Copies of such report shall be filed with such department and with the board of county commissioners. With the approval of such board copies may be printed for distribution to persons and agencies interested in the court or community program for dependent, neglected, or delinquent children and juvenile traffic offenders. The number of copies ordered printed and the estimated cost of each printed copy shall appear on each copy of such report printed for distribution.

[§ 2151.31.3] § 2151.313 Fingerprints and photographs.

No child shall be fingerprinted or photographed in the investigation of a crime without the consent of the judge, except as provided in this section. Fingerprints of a child may be taken by law enforcement officers investigating the commission of an act which would be a felony if committed by an adult when there is probable cause to believe that the child may have been involved in the felonious act being investigated.

Unless otherwise ordered by the court, originals and all copies of such fingerprints or photographs shall be delivered to the juvenile court after use for their original purpose for such further use and disposition as the court directs.

Fingerprints and photographs of a child shall be removed from the file and destroyed if a complaint is not filed or is dismissed after having been filed.

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority				
2. Privacy and Security Council				
3. Dissemination Regulations	Secret Indictment: 22-385	X		
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	74-150.9	X		
3.11 Authorizes to Govt. Non-Criminal Justice Agencies				
3.12 Authorizes to Private Sector				
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	74-150.9	X		
3.21 Authorizes to Govt. Non-Criminal Justice Agencies				
3.22 Authorizes to Private Sector				
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	74-150.9	X		
3.31 Authorizes to Govt. Non-Criminal Justice Agencies				
3.32 Authorizes to Private Sector				
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy				
5. Right to Challenge				
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information	22-991C 74-150.7	X X		
8. Purging Conviction Information	11-794 74-150.7 63-2-410	X X X		

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information				
11. Removal of Disqualifications	63-2-410	X		
12. Right to State Non-Existence of Record	63-2-410	X		
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	74-150.10 74-150.12	X X		
14.2 Auditing Requirements				
14.3 Other Accuracy/Completeness Requirements				
15. Dedication				
16. Civil Remedies				
17. Criminal Penalties				
18. Public Records	51-24	X		
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security				
22.1 Physical (Building) Security				
22.2 Administrative Security				
22.3 Computer Security				
23. Transaction Logs				
24. Training Employees				
25. Listing of Information Systems	74-118.13	X		
26. FOIA (Including CJI)				
27. FOIA (Excluding CJI)				
28. Central State Repository	74-150.9	X		

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	181:555 E.O. 75-23	X X		
2. Privacy and Security Council	E.O. 75-23, Sect. 10,11	X		
3. Dissemination Regulations	Gen. 181.555(1) 181.540 E.O. 75-23	X X X		
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	Reg. 257-10-025		X	
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	Reg. 257-10-025		X	
3.12 Authorizes to Private Sector				
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector	Reg. 257-10-025		X	
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	Reg. 257-10-025		X	
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	Reg. 257-10-025		X	
3.22 Authorizes to Private Sector				
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector	Reg. 257-10-025		X	
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	Reg. 257-10-025		X	
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	Reg. 257-10-025		X	
3.32 Authorizes to Private Sector				
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector	Reg. 257-10-025		X	
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	181.555(2) Reg. 257-10-035	X	X	
5. Right to Challenge	181.555(2) Reg. 257-10-035	X	X	
6. Judicial Review of Challenged Information	181.555(2) Reg. 257-10-035(5)	X	X	
7. Purging Non-Conviction Information	181.555(3) Reg. 257-10-020	X	X	
8. Purging Conviction Information	181.555(3) Reg. 257-10-020	X	X	

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information	137.225			X
11. Removal of Disqualifications	137.225			X
12. Right to State Non-Existence of Record	137.225			X
13. Research Access	E.O. 75-23(3,6) Reg. 257-10-030	X	X	
14. Accuracy and Completeness	E.O. 75-23	X		
14.1 Disposition Reporting Requirements	181.511; 181.521 181.530	X X		
14.2 Auditing Requirements	Reg. 257-10-040		X	
14.3 Other Accuracy/Completeness Requirements	181.555(3) Reg. 257-10-020, 030	X	X	
15. Dedication				
16. Civil Remedies	Reg. 257-10-040 192.490	X	X	
17. Criminal Penalties				
18. Public Records	192.001	X		
19. Separation of Files				
20. Regulation of Intelligence Collection	E.O. 75-23, Sect. 2	X		
21. Regulation of Intelligence Dissemination				
22. Security	E.O. 75-23	X		
22.1 Physical (Building) Security	Reg. 257-10-025		X	
22.2 Administrative Security	Reg. 257-10-025		X	
22.3 Computer Security	Reg. 257-10-025		X	
23. Transaction Logs	Reg. 257-10-035		X	
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)	192.500	X		
27. FOIA (Excluding CJI)	181.540 192.500	X X		
28. Central State Repository	181:066	X		

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137.225 Order setting aside conviction; prerequisites; limitations. (1) At any time after the lapse of three years from the date of pronouncement of judgment, any defendant who has fully complied with and performed the sentence of the court and whose conviction is described in subsection (5) of this section by motion may apply to the court wherein that conviction was entered for entry of an order setting aside the conviction.

(2) A copy of the motion and a full set of the defendant's fingerprints shall be served upon the office of the prosecuting attorney who prosecuted the crime or violation and opportunity be given to contest the motion. The fingerprint card with the notation "motion for setting aside conviction" shall be forwarded to the bureau. Information resulting from the fingerprint search along with the fingerprint card shall be returned to the prosecuting attorney.

(3) Upon hearing the motion, the court may require the filing of such affidavits and may require the taking of such proofs as it deems proper. If the court determines that the circumstances and behavior of the applicant from the date of conviction to the date of the hearing on the motion warrant setting aside the conviction, it shall enter an appropriate order which shall state the original arrest charge and the conviction charge if different from the original, date of charge, submitting agency and disposition. The order shall further state that positive identification has been established by the bureau and further identified as to state bureau number or submitting agency number. Upon the entry of such an order, the applicant for purposes of the law shall be deemed not to have been previously convicted and the court shall issue an order sealing the record of conviction and other official records in the case, including the records of arrest resulting in the criminal proceeding.

(4) The clerk of the court shall forward a certified copy of the order to such agencies as directed by the court. A certified copy must be sent to the Corrections Division when the person has been in the custody of the Corrections Division. Upon entry of such an order, such conviction, arrest or other proceeding shall be deemed not to have occurred, and the applicant may answer accordingly any questions relating to their occurrence.

(5) The provisions of subsection (1) of this section apply to a conviction of:

(a) A Class C felony.

(b) The crime of possession of the narcotic drug marijuana when that crime was punishable as a felony only.

(c) A crime punishable as either a felony or a misdemeanor, in the discretion of the court.

(d) A misdemeanor, including a violation of a municipal ordinance, for which a jail sentence may be imposed.

(e) A violation described in ORS 167.207, 167.217 or 167.222.

(f) An offense committed before January 1, 1972, which if committed after that date would be:

(A) A Class C felony.

(B) A crime punishable as either a felony or a misdemeanor, in the discretion of the court.

(C) A misdemeanor.

(D) A violation.

(6) The provisions of subsection (1) of this section do not apply to:

(a) A person convicted of a state or municipal traffic offense;

(b) A person convicted, within the 10-year period immediately preceding the filing of his

motion pursuant to subsection (1) of this section, of more than one offense, excluding motor vehicle violations, whether the second or additional convictions occurred in the same action in which the conviction as to which relief is sought occurred or in another action. Notwithstanding subsection (1) of this section, a conviction which has been set aside under this section shall be considered for the purpose of determining whether this paragraph is applicable; or

(c) A person who at the time the motion authorized by subsection (1) of this section is pending before the court is under charge of commission of any crime.

(7) The provisions of subsection (1) of this section apply to convictions which occurred before, as well as those which occurred after, September 9, 1971.

(8) For purposes of any civil action in which truth is an element of a cause of action or affirmative defense, the provisions of subsection (3) of this section providing that the conviction, arrest or other proceeding be deemed not to have occurred shall not apply and a party may apply to the court for an order requiring disclosure of the official records in the case as may be necessary in the interest of justice. [1971 c.434 §2; 1973 c.680 §3; 1973 c.689 §1a; 1973 c.836 §265; 1975 c.548 §10; 1975 c.714 §2; 1977 c.286 §1]

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	18-9161			X
2. Privacy and Security Council				
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	18-9121(a)			X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	18-9121(b)			X
3.12 Authorizes to Private Sector	18-9125 18-9121(b)			X X
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	18-9121(a)			X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies				
3.22 Authorizes to Private Sector				
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies	18-9124 18-9121(b)			X X
3.25 Prohibits to Private Sector	18-9121(b)			X
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	18-9121(a)			X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	18-9121(b)			X
3.32 Authorizes to Private Sector	18-9125 18-9121(b)			X X
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	18-9151, 9152 Reg. 195.4			X X
5. Right to Challenge	18-9151, 9152 Reg. 195.5			X X
6. Judicial Review of Challenged Information	18-9152(e)			X
7. Purging Non-Conviction Information	18-9122			X
8. Purging Conviction Information	18-9122			X

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information				
11. Removal of Disqualifications				
12. Right to State Non-Existence of Record				
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	18-9112 18-9113			X X
14.2 Auditing Requirements	18-9141, 9161			X
14.3 Other Accuracy/Completeness Requirements	18-9111, 9114, 9142 Reg. 195.2			X X
15. Dedication				
16. Civil Remedies	18-9181, 9183			X
17. Criminal Penalties				
18. Public Records	65-66.1	X		
19. Separation of Files	18-9106			X
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security	Gen. Reg. 195.6			X
22.1 Physical (Building) Security	18-9131			X
22.2 Administrative Security	18-9131			X
22.3 Computer Security	18-9131			X
23. Transaction Logs	18-9121(f)			X
24. Training Employees				
25. Listing of Information Systems	18-9171			X
26. FOIA (Including CJI)				
27. FOIA (Excluding CJI)				
28. Central State Repository	18-9101			X

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Pennsylvania Statutes Annotated (Purdon)
Title 18

PART III. MISCELLANEOUS PROVISIONS

Chapter 91. Criminal History Record Information

Subchapter A. General Provisions

§ 9101. Short title of chapter.
§ 9102. Definitions.
§ 9103. Applicability.
§ 9104. Scope.
§ 9105. Other criminal justice information.
§ 9106. Prohibited information.

Subchapter B. Completeness and Accuracy

§ 9111. Duties of criminal justice agencies.
§ 9112. Mandatory fingerprinting.
§ 9113. Disposition reporting by criminal justice agencies.
§ 9114. Correction of inaccurate information.

Subchapter C. Dissemination of Criminal History Record Information

§ 9121. General regulations.

§ 9122. Expungement.
§ 9123. Juvenile records.
§ 9124. Use of records by licensing agencies.
§ 9125. Use of records for employment.

Subchapter D. Security

§ 9131. Security requirements for repositories.

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§ 9141. Annual audit of repositories.
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§ 9151. Right to access and review.
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Subchapter G. Responsibility of Attorney General

§ 9161. Duties of the Attorney General.

Subchapter H. Public Notice

§ 9171. Requirements of repositories relating to public notice.

Subchapter I. Sanctions

§ 9181. General administrative sanctions.
§ 9182. Criminal penalties (Repealed).
§ 9183. Civil actions.

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PART III
MISCELLANEOUS PROVISIONS

Enactment. Part III was added July 16, 1979, No.47, effective January 1, 1980.

CHAPTER 91
CRIMINAL HISTORY RECORD INFORMATION

Enactment. Chapter 91 was added July 16, 1979, No.47, effective January 1, 1980.

SUBCHAPTER A
GENERAL PROVISIONS

§ 9101. Short title of chapter.

This chapter shall be known and may be cited as the "Criminal History Record Information Act."

§ 9102. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"**Administration of criminal justice.**" The activities directly concerned with the prevention, control or reduction of crime, the apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders; criminal identification activities; or the collection, storage dissemination or usage of criminal history record information.

"**Audit.**" The process of reviewing compliance with applicable Federal and State laws and regulations related to the privacy and security of criminal history record information.

"**Automated systems.**" A computer or other internally programmed device capable of automatically accepting and processing data, including computer programs, data communication links, input and output data and data storage devices.

"**Central repository.**" The central location for the collection, compilation, maintenance and dissemination of criminal history record information by the Pennsylvania State Police.

"**Criminal history record information.**" Information collected by criminal justice agencies concerning individuals, and arising from the initiation of a criminal proceeding consisting of identifiable descriptions, dates and notations of arrests, indictments, informations or other formal criminal charges and any dispositions arising therefrom. The term does not include intelligence information, investigative information or treatment information, including medical and psychological information, or information and records specified in section 9104 (relating to scope).

"**Criminal justice agency.**" Any court, including the minor judiciary, with criminal jurisdiction or any other governmental agency, or subunit thereof, created by statute or by the State or Federal constitutions, specifically authorized to perform as its principal function the administration of criminal justice, and which allocates a substantial portion of its annual budget to such function. Criminal justice agencies include, but are not limited to: organized State and municipal police departments, local detention facilities, county, regional and State correc-

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tional facilities, probation agencies, district or prosecuting attorneys, parole boards and pardon boards.

"Disposition." Information indicating that criminal proceedings have been concluded, including information disclosing that police have elected not to refer a matter for prosecution, that a prosecuting authority has elected not to commence criminal proceedings or that a grand jury has failed to indict and disclosing the nature of the termination of the proceedings; or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement. Dispositions of criminal proceedings in the Commonwealth shall include, but not be limited to, acquittal, acquittal by reason of insanity, pretrial probation or diversion, charge dismissed, guilty plea, nolle prosequi, no information filed, nolo contendere plea, convicted, abatement, discharge under rules of the Pennsylvania Rules of Criminal Procedure, demurrer sustained, pardoned, sentence commuted, mistrial-defendant discharged, discharge from probation or parole or correctional supervision.

"Dissemination." The oral or written transmission or disclosure of criminal history record information to individuals or agencies other than the criminal justice agency which maintains the information.

"Expunge."

(1) To remove information so that there is no trace or indication that such information existed; or

(2) to eliminate all identifiers which may be used to trace the identity of an individual, allowing remaining data to be used for statistical purposes.

"Intelligence information." Information concerning the habits, practices, characteristics, history, possessions, associations or financial status of any individual.

"Investigative information." Information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information.

"Repository." Any location in which criminal history record information is collected, compiled, maintained and disseminated by a criminal justice agency.

"Treatment information." Information concerning medical, psychiatric, psychological or other rehabilitative treatment provided, suggested or prescribed for any individual.

(Dec. 14, 1979, No.127, eff. imd.)

1979 Amendment. Act 127 amended the def. of "criminal history record information," added the defs. of "automated systems," "intelligence information," "investigative information" and "treatment information" and repealed the def. of "secondary dissemination."

§ 9103. Applicability.

This chapter shall apply to persons within this Commonwealth and to any agency of the Commonwealth or its political subdivisions which collects, maintains, disseminates or receives criminal history record information.

§ 9104. Scope.

(a) General rule.—Except for the provisions of Subchapter B (relating to completeness and accuracy), Subchapter D (relating to security) and Subchapter F (relating to individual right of access and review), nothing in this chapter shall be construed to apply to:

(1) Original records of entry compiled chronologically, including, but not limited to, police blotters.

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(2) Any documents, records or indices prepared or maintained by or filed in any court of this Commonwealth, including but not limited to the minor judiciary.

(3) Posters, announcements, or lists for identifying or apprehending fugitive or wanted persons.

(4) Announcements of executive clemency.

(b) Court dockets and police blotters.—Court dockets and police blotters and information contained therein shall, for the purpose of this chapter, be considered public records.

(c) Substitutes for court dockets.—Where court dockets are not maintained any reasonable substitute containing that information traditionally available in court dockets shall, for the purpose of this chapter, be considered public records.

(d) Certain disclosures authorized.—Nothing in this chapter shall prohibit a criminal justice agency from disclosing an individual's prior criminal activity to an individual or agency if the information disclosed is based on records set forth in subsection (a).

(e) Noncriminal justice agencies.—Information collected by noncriminal justice agencies and individuals from the sources identified in this section shall not be considered criminal history record information.

(Dec. 14, 1979, No.127, eff. imd.)

1979 Amendment. Act 127 repealed subsec. (d) and relettered subsec. (e) to (d) and subsec. (f) to (e).

§ 9105. Other criminal justice information.

Nothing in this chapter shall be construed to apply to information concerning juveniles, except as provided in section 9123 (relating to juvenile records), unless they have been adjudicated as adults, nor shall it apply to intelligence information, investigative information, treatment information, including medical and psychiatric information, caution indicator information, modus operandi information, wanted persons information, stolen property information, missing persons information, employment history information, personal history information, nor presentence investigation information. Criminal history record information maintained as a part of these records shall not be disseminated unless in compliance with the provisions of this chapter.

§ 9106. Prohibited information.

Intelligence information, investigative information and treatment information shall not be collected in the central repository nor in any automated or electronic criminal justice information system. This prohibition shall not preclude the collection in the central repository or in any automated or electronic criminal justice information system of names, words, numbers, phrases or other similar index keys to serve as indices to investigative reports.

(Dec. 14, 1979, No.127, eff. imd.)

SUBCHAPTER B
COMPLETENESS AND ACCURACY

§ 9111. Duties of criminal justice agencies.

It shall be the duty of every criminal justice agency within the Commonwealth to maintain complete and accurate criminal history record information and to report such information at such times and in such manner as required by the provisions of this chapter or other applicable statutes.

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§ 9112. Mandatory fingerprinting.

(a) General rule.—Fingerprints of all persons arrested for a felony, misdemeanor or summary offense which becomes a misdemeanor on a second arrest after conviction of that summary offense, shall be taken by the arresting authority, and within 48 hours of the arrest, shall be forwarded to, and in a manner and such a form as provided by, the central repository.

(b) Other cases.—Where private complaints for a felony or misdemeanor result in a conviction or where persons are proceeded against by a summons, or for offenses under section 3929 (relating to retail theft), the court of proper jurisdiction shall order the defendant to submit for fingerprinting by the municipal police of the jurisdiction in which the offense allegedly was committed or, in the absence of a police department, the State Police. Fingerprints so obtained shall be forwarded immediately to the central repository.

(c) Transmittal of information.—The central repository shall transmit the criminal history record information to the criminal justice agency which submitted the fingerprint card.

(Dec. 14, 1979, No.127, eff. imd.)

1979 Amendment. Act 127 amended subsec. (b).

§ 9113. Disposition reporting by criminal justice agencies.

(a) Reports of dispositions required.—All criminal justice agencies, including but not limited to, courts, county, regional and State correctional institutions and parole and probation agencies, shall collect and submit reports of dispositions occurring within their respective agencies for criminal history record information, within 90 days of the date of such disposition to the central repository as provided for in this section.

(b) Courts.—Courts shall collect and submit criminal court dispositions as required by the Administrative Office of Pennsylvania Courts.

(c) Correctional institutions.—County, regional and State correctional institutions shall collect and submit information regarding the admission, release and length of sentence of individuals sentenced to local and county institutions as required by the Bureau of Correction.

(d) Probation and parole offices.—County probation and parole offices shall collect and submit information relating to the length of time and charges for which an individual is placed under and released from the jurisdiction of such agency as required by the Pennsylvania Board of Probation and Parole.

(e) State agencies.—The Administrative Office of Pennsylvania Courts, the Bureau of Correction, the Pennsylvania Board of Probation and Parole and the Pennsylvania Board of Pardons shall collect and submit to the central repository such information necessary to maintain complete and accurate criminal history record information. Each State agency listed in this subsection shall submit to the central repository any reports of dispositions occurring within their respective agencies and such information reported from county and local criminal justice agencies.

§ 9114. Correction of inaccurate information.

Within 15 days of the detection of inaccurate data in a criminal history record, regardless of the manner of discovery, the criminal justice agency which reported the information shall comply with the following procedures to effect correction:

(1) Correct its own records.

(2) Notify all recipients, including the central repository, of the inaccurate data and the required correction.

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SUBCHAPTER C
DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION

§ 9121. General regulations.

(a) Dissemination to criminal justice agencies.—Criminal history record information maintained by any criminal justice agency shall be disseminated to any criminal justice agency or a noncriminal justice agency that is providing a service for which a criminal justice agency is responsible.

(b) Dissemination to noncriminal justice agencies.—Criminal history record information shall only be disseminated by a law enforcement agency to any individual or agency other than a criminal justice agency upon request:

(1) A fee may be charged by a law enforcement agency for each request for the criminal history record information by an individual or agency other than a criminal justice agency.

(2) Before a law enforcement agency disseminates criminal history record information to an individual or agency other than a criminal justice agency, it shall extract from the record all notations of arrests, indictments or other information relating to the initiation of criminal proceedings where there is a disposition of acquittal, charges are dismissed or withdrawn, a nolle prosequi is entered, the proceedings are indefinitely postponed or the individual is otherwise not found guilty of committing an alleged criminal act where three years have elapsed from the time of arrest and no proceedings are pending seeking conviction or where the conviction has occurred.

(c) Data required to be kept.—Any criminal justice agency which disseminates criminal history record information must indicate to the recipient that the information disseminated is only that information contained in its own file, the date of the last entry, and that a summary of the Statewide criminal history record information may be obtained from the central repository.

(d) Extracting from the record.—When criminal history record information is maintained by a criminal justice agency in records containing investigative information, intelligence information, treatment information or other nonpublic information, the agency may extract and disseminate only the criminal history record information if the dissemination is to be made to a noncriminal justice agency or individual.

(e) Dissemination procedures.—Criminal justice agencies may establish reasonable procedures for the dissemination of criminal history record information.

(f) Notations on record.—Repositories must enter as a permanent part of an individual's criminal history record information file, a listing of all persons and agencies to whom they have disseminated that particular criminal history record information and the date and purpose for which the information was disseminated. Such listing shall be maintained separate from the record itself.

(Dec. 14, 1979, No.127, eff. imd.)

§ 9122. Expungement.

(a) Specific proceedings.—Criminal history record information shall be expunged in a specific criminal proceeding when:

(1) no disposition has been received or, upon request for criminal history record information, no disposition has been recorded in the repository within 18 months after the date of arrest and the court of proper jurisdiction certifies to the

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director of the repository that no disposition is available and no action is pending. Expungement shall not occur until the certification from the court is received and the director of the repository authorizes such expungement; or

(2) a court order requires that such nonconviction data be expunged.

(b) Generally.—Criminal history record information may be expunged when:

(1) an individual who is the subject of the information reaches 70 years of age and has been free of arrest or prosecution for ten years following final release from confinement or supervision; or

(2) an individual who is the subject of the information has been dead for three years.

(c) Maintenance of certain information required or authorized. -Notwithstanding any other provision of this chapter, the prosecuting attorney and the central repository shall, and the court may, maintain a list of the names and other criminal history record information of persons whose records are required by law or court rule to be expunged where the individual has successfully completed the conditions of any pretrial or post-trial diversion or probation program. Such information shall be used solely for the purpose of determining subsequent eligibility for such programs. Criminal history record information may be expunged as provided in subsection (b)(1) and (2). Such information shall be made available to any court upon request.

(d) Notice of expungement. -Notice of expungement shall promptly be submitted to the central respository which shall notify all criminal justice agencies which have received the criminal history record information to be expunged.

(e) Public records.—Public records listed in section 9104(a) (relating to scope) shall not be expunged.

(f) District attorney's notice.—No expungement shall be made without ten days prior notice to the district attorney of the county where the original charges were filed.

Applicability. Section 4(a) of the act of December 14, 1979, No.127, provided that subsec. (a)(1) shall not be applicable to criminal proceedings initiated or completed prior to December 14, 1979, unless requested by an individual as provided in Subchapter F.

§ 9123. Juvenile records.

(a) Expungement of juvenile records. -Notwithstanding the provisions of section 9105 (relating to other criminal justice information) and except upon cause shown, expungement of records of juvenile delinquency cases wherever kept or retained shall occur after ten days notice to the district attorney, whenever the court upon its motion or upon the motion of a child or the parents or guardian finds:

(1) a complaint is filed which is not substantiated or the petition which is filed as a result of a complaint is dismissed by the court other than as a result of an informal adjustment;

(2) five years have elapsed since the final discharge of the person from commitment, placement, probation or any other disposition and referral and since such final discharge, the person has not been convicted of a felony, misdemeanor or adjudicated delinquent and no proceeding is pending seeking such conviction or adjudication; or

(3) the individual is 21 years of age or older and a court orders the expungement.

(b) Notice to prosecuting attorney. The court shall give notice of the applications for the expungement of juvenile records to the prosecuting attorney.

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(c) Dependent children. All records of children alleged to be or adjudicated dependent may be expunged upon court order after the child is 21 years of age or older.

(Dec. 14, 1979, No.127, eff. imd.)

1979 Amendment. Act 127 amended subsec. (a).

§ 9124. Use of records by licensing agencies.

(a) State agencies.--Except as provided by this chapter, a board, commission or department of the Commonwealth, when determining eligibility for licensing, certification, registration or permission to engage in a trade, profession or occupation, may consider convictions of the applicant of crimes but the convictions shall not preclude the issuance of a license, certificate, registration or permit.

(b) Prohibited use of information.--The following information shall not be used in consideration of an application for a license, certificate, registration or permit:

(1) Records of arrest if there is no conviction of a crime based on the arrest.

(2) Convictions which have been annulled or expunged.

(3) Convictions of a summary offense.

(4) Convictions for which the individual has received a pardon from the Governor.

(5) Convictions which do not relate to the applicant's suitability for the license, certificate, registration or permit.

(c) State action authorized. Boards, commissions or departments of the Commonwealth authorized to license, certify, register or permit the practice of trades, occupations or professions may refuse to grant or renew, or may suspend or revoke any license, certificate, registration or permit for the following causes:

(1) Where the applicant has been convicted of a felony.

(2) Where the applicant has been convicted of a misdemeanor which relates to the trade, occupation or profession for which the license, certificate, registration or permit is sought.

(d) Notice. The board, commission or department shall notify the individual in writing of the reasons for a decision which prohibits the applicant from practicing the trade, occupation or profession if such decision is based in whole or part on conviction of any crime.

(Dec. 14, 1979, No.127, eff. imd.)

1979 Amendment. Act 127 amended subsec. (b).

§ 9125. Use of records for employment.

(a) General rule. Whenever an employer is in receipt of information which is part of an employment applicant's criminal history record information file, it may use that information for the purpose of deciding whether or not to hire the applicant, only in accordance with this section.

(b) Use of information. Arrests and misdemeanor convictions may be considered by the employer only to the extent to which they relate to the applicant's suitability for employment in the position for which he has applied.

(c) Notice. The employer shall notify in writing the applicant if the decision not to hire the applicant is based in whole or in part on criminal history record information.

(Dec. 14, 1979, No.127, eff. imd.)

1979 Amendment. Act 127 amended subsec. (b).

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SUBCHAPTER D
SECURITY

§ 9131. Security requirements for repositories.

Every criminal justice agency collecting, storing or disseminating criminal history record information shall ensure the confidentiality and security of criminal history record information by providing that wherever such information is maintained, a criminal justice agency must:

(1) Institute procedures to reasonably protect any repository from theft, fire, sabotage, flood, wind or other natural or man-made disasters.

(2) Select, supervise and train all personnel authorized to have access to criminal history record information.

(3) Ensure that, where computerized data processing is employed, the equipment utilized for maintaining criminal history record information is solely dedicated to purposes related to the administration of criminal justice, or, if the equipment is not used solely for the administration of criminal justice, the criminal justice agency shall be accorded equal management participation in computer operations used to maintain the criminal history record information.

(4) Provide that criminal history record information maintained in a repository is disseminated upon proper validation only to those individuals and agencies authorized to receive the information by the provisions of this chapter.

SUBCHAPTER E
AUDIT

§ 9141. Annual audit of repositories.

(a) Audit required.—The Attorney General shall conduct annual audits of the central repository and of a representative sample of all repositories to ensure that the provisions of this chapter are upheld.

(b) Access to records.—Persons conducting the audit shall be provided access to all records, reports and listings required to conduct an audit of criminal history record information, and all persons with access to such information or authorized to receive such information shall cooperate with and provide information requested.

(c) Contents of audit.—The audit shall contain a report of deficiencies and recommendations for the correction of such deficiencies. Upon the completion of every audit, the audited agency shall carry out the recommendations within a reasonable period of time unless the audit report is appealed to the Attorney General and the appeal is upheld.

(d) Modification of recommendations.—The Attorney General shall have the power to modify the corrective measures recommended by the audit.

§ 9142. Quality control.

Each repository shall establish effective procedures, in compliance with rules and regulations promulgated by the Attorney General, for the completeness and accuracy of criminal history record information.

SUBCHAPTER F
INDIVIDUAL RIGHT OF ACCESS AND REVIEW

§ 9151. Right to access and review.

(a) General rule.—Any individual or his legal representative has the right to

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review, challenge, correct and appeal the accuracy and completeness of his criminal history record information.

(b) Prisoners.—Persons incarcerated in correctional facilities and institutions may authorize a correctional employee to obtain a copy of their criminal history record information for the purpose of review, challenge and appeal.

§ 9152. Procedure.

(a) Rules and regulations.—The Attorney General in cooperation with appropriate criminal justice agencies shall promulgate rules and regulations to implement this section and shall establish reasonable fees.

(b) Requests for information.—Any individual requesting to review his or her own criminal history record information shall submit proper identification to the criminal justice agency which maintains his or her record. Proper identification shall be determined by the officials of the repository where the request is made. If criminal history record information exists the individual may review a copy of su information without undue delay for the purpose of review and challenge.

(c) Challenge of accuracy.—The individual may challenge the accuracy of his or her criminal history record information by specifying which portion of the record is incorrect and what the correct version should be. Failure to challenge any portion of the record in existence at that time will place the burden of proving the inaccuracy of any part subsequently challenged upon the individual. Information subsequently added to such record shall also be subject to review, challenge, correction or appeal.

(d) Review of challenge.—All criminal justice agencies shall have 60 days to conduct a review of any challenge and shall have the burden of proving the accuracy of the record. If the challenge is deemed valid, the appropriate officials must ensure that:

(1) The criminal history record information is corrected.

(2) A certified and corrected copy of the criminal history record information is provided to the individual.

(3) Prior erroneous criminal history record information disseminated to criminal justice agencies shall be destroyed or returned and replaced with corrected information.

(4) The individual is supplied with the names of those noncriminal justice agencies and individuals which have received erroneous criminal history record information.

(e) Appeals.—

(1) If the challenge is ruled invalid, an individual has the right to appeal the decision to the Attorney General within 30 days of notification of the decision by the criminal justice agency.

(2) The Attorney General shall have the authority to conduct administrative appeal hearings in accordance with the Administrative Agency Law.

(3) The decision of the Attorney General may be appealed to the Commonwealth Court by an aggrieved individual.

Applicability. Section 4(b) of the act of December 14, 1979, No.127, provided that subsec. (d)(3) and (4) shall only apply to criminal history record information disseminated after December 14, 1979.

§ 9153. Individual rights on access and review.

Any individual exercising his or her right to access and review under the provisions of this subchapter shall be informed when criminal history record infor-

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mation is made available that he or she is under no obligation to divulge such information to any person or agency.

SUBCHAPTER G
RESPONSIBILITY OF ATTORNEY GENERAL

§ 9161. Duties of the Attorney General.

The Attorney General shall have the power and authority to:

(1) Establish rules and regulations for criminal history record information with respect to security, completeness, accuracy, individual access and review, quality control and audits of repositories.

(2) Establish a uniform schedule of reasonable fees for the costs of reproducing criminal history record information for individual access and review and for research or statistical purposes and access by noncriminal justice agencies.

(3) Make investigations concerning all matters touching the administration and enforcement of this chapter and the rules and regulations promulgated thereunder.

(4) Institute civil and criminal proceedings for violations of this chapter and the rules and regulations adopted thereunder.

(5) Conduct annual audits of the central repository and of a representative sample of all repositories within the Commonwealth, collecting, compiling, maintaining and disseminating criminal history record information.

(6) Appoint such employees and agents as it may deem necessary.

SUBCHAPTER H
PUBLIC NOTICE

§ 9171. Requirements of repositories relating to public notice.

Repositories maintaining criminal history record information shall inform the public and post in a public place, notice of the existence, purpose, use and accessibility of the criminal history record information they maintain and the requirements of the repository for identification on individual access and review.

SUBCHAPTER I
SANCTIONS

§ 9181. General administrative sanctions.

Any person, including any agency or organization, who violates the provisions of this chapter or any regulations or rules promulgated under it may:

(1) Be denied access to specified criminal history record information for such period of time as the Attorney General deems appropriate.

(2) Be subject to civil or criminal penalties or other remedies as provided for in this chapter.

(3) In the case of an employee of any agency who violates any provision of this chapter, be administratively disciplined by discharge, suspension, reduction in grade, transfer or other formal disciplinary action as the agency deems appropriate.

§ 9182. Criminal penalties (Repealed).

Repeal Note. Section 9182 was repealed December 14, 1979, No. 127, effective immediately.

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§ 9183. Civil actions.

(a) Injunctions.—The Attorney General or any other individual or agency may institute an action in a court of proper jurisdiction against any person, agency or organization to enjoin any criminal justice agency, noncriminal justice agency, organization or individual violating the provisions of this chapter or to compel such agency, organization or person to comply with the provisions of this chapter.

(b) Action for damages.—

(1) Any person aggrieved by a violation of the provisions of this chapter or of the rules and regulations promulgated under this chapter, shall have the substantive right to bring an action for damages by reason of such violation in a court of competent jurisdiction.

(2) A person found by the court to have been aggrieved by a violation of this chapter or the rules or regulations promulgated under this chapter, shall be entitled to actual and real damages of not less than $100 for each violation and to reasonable costs of litigation and attorney's fees. Exemplary and punitive damages of not less than $1,000 nor more than $10,000 shall be imposed for any violation of this chapter, or the rules or regulations adopted under this chapter, found to be willful.

* * *

REGULATIONS FOR THE ADMINISTRATION OF THE CRIMINAL HISTORY RECORD INFORMATION ACT

Subpart K. CRIMINAL INFORMATION
CHAPTER 195. CRIMINAL RECORDS

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§ 195.1. Definitions.

The following words and terms, when used in this chapter, shall have, unless the context clearly indicates otherwise, the following meanings.

Act – 18 Pa. C. S. § § 9101 – 9183.

Administration of criminal justice - The activities directly concerned with the prevention, control or reduction of crime and the apprehension, detention, pretrial release, post - trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders; criminal identification activities; or the collection, storage, dissemination, or usage of criminal history record information.

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Automated systems - A computer or other internally programmed device capable of automatically accepting and processing data, including computer programs, data communication links, input and output data, and data storage devices.

Central repository - The central location for the collection, compilation, maintenance, and dissemination of criminal history record information by the Pennsylvania State Police.

Criminal history record information - Information collected by criminal justice agencies concerning individuals and arising from the initiation of a criminal proceeding, consisting of identifiable descriptions, and dates and notations of arrests, indictments, informations, or other formal criminal charges and any dispositions arising therefrom; the term does not include intelligence information, investigative information, treatment information, or information and records specified in 18 Pa. C. S. § 9104.

Criminal justice agency - Any court including the minor judiciary with criminal jurisdiction or any other governmental agency or subunit thereof created by statute or by the State or Federal constitutions, specifically authorized to perform as its principal function the administration of criminal justice, and which allocates a substantial portion of its annual budget to such function. Criminal justice agencies include, but are not limited to organized State and municipal police departments, local detention facilities, county, regional and State correctional facilities, probation agencies, district or prosecuting attorneys, parole boards, and pardon boards.

Disposition - Information indicating that criminal proceedings have been concluded including information disclosing that police have elected not to refer a matter for prosecuting, that a prosecuting authority has elected not to commence criminal proceedings, or that a grand jury has failed to indict and disclosing the nature of the termination of the proceedings or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement. Dispositions of criminal proceedings in this Commonwealth shall include, but not be limited to acquittal, acquittal by reason of insanity, pretrail probation or diversion, charge dismissed, guilty plea nolle prosequi, no information filed, nolo contendere plea, convicted abatement, discharge under the provisions of 234 Pa. Code (relating to rules criminal procedure), demurrer sustained, pardoned, sentence commuted, mistrial - defendant, discharge from probation or parole, or correctional supervision.

Dissemination - The oral or written transmission or disclosure of criminal history record information to individuals or agencies other than the criminal justice agency which maintains the information.

Expunge - To remove information so that there is no trace or indication that such information existed; or to eliminate all identifiers which may be used to trace the identity of an individual, allowing remaining data to be used for statistical purposes.

Intelligence information - Information concerning the habits, practices, characteristics, history, possessions, associations, or financial status of any individual.

Investigative information Information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing; the term may include modus operandi information.

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Repository - Any location in which criminal history record information is collected, compiled, maintained, and disseminated by a criminal justice agency.

Secondary dissemination - (Reserved)

Treatment information - Information concerning medical, psychiatric, psychological, or other rehabilitative treatment provided, suggested, or prescribed for any individual.

§ 195.2. Completeness and accuracy.

(a) As to each written indication contained in a repository's records that a criminal charge has been brought against an individual, the repository shall maintain a complete and accurate criminal record as to that charge.

(b) A complete and accurate criminal history record as to a particular criminal charge shall include but not be limited to the following:

(1) The full name and aliases of the individual charged.

(2) An accurate statement of the crime charged, including the title of the offense and the statutory citation and the Offense Tracking Number (OTN) - with appropriate prefixes and suffixes - whenever an OTN has been assigned.

(3) The final or latest disposition of the charge.

(4) The sentence imposed for a conviction of the charge.

(c) The timely recording and reporting of dispositions, the taking and filing of fingerprints, the expunging of information, and the correcting of inaccurate information shall be conducted in the manner set forth in 18 Pa. C. S. § 9111-9114, 9121-9123 and 9153.

§ 195.3. Uniform schedule of fees.

Individuals and noncriminal justice agencies requesting criminal history record information, whether for individual access and review or for other purposes shall pay a nonrefundable fee of $10 for each request made. Such fee shall be paid by check or money order and shall be made payable to the re - ponding repository.

§ 195.4. Access and review.

(a) An individual shall be permitted to review his own criminal history record information maintained by any repository.

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(b) The individual wishing to review his own record shall complete a Request for Review of Criminal History Record Information Form which may be obtained from the Pennsylvania State Police or from any repository. The individual making such a request shall be required to indicate on the application form only his full name including any aliases, his current address, the date an place of his birth and his social security number. The completed form should then be delivered, by mail or in person, to the repository maintaining the information the individual wishes to review.

(c) An individual exercising his right to review his criminal history record information shall be informed that he is not required to divulge such information or the lack thereof to any person or agency.

(d) If, after a proper search, criminal history record information is not found in the responding repository, the individual shall be so informed, in writing, within 30 days of receipt by the repository of the application from and fee.

(e) If criminal history record information is found in the responding repository, the repository shall, within 30 days of receipt of the application form and fee, deliver by mail to the address indicated on the application form or deliver in person a copy of the information to the individual making the request.

(f) If the individual requests information from a repository other than the central repository, the respository which disseminates the criminal history record information shall indicate to the recipient that the information disseminated is only the information contained in its own files as of the date of the last entry and that a summary of the statewide criminal history record information may be obtained from the central repository.

§ 195.5. Challenge.

(a) Enclosed along with the copy of the criminal history record information shall be a postage paid form - the Challenge Form - which is to be completed and returned within 30 days of the date the form is received by the subject of the criminal history record information and which states that the subject has reviewed the criminal history information and that he understands that those portions of the record reviewed shall be presumed by law to be accurate. The challenge form shall state in bold letters: "YOU HAVE 30 DAYS FROM THE DATE OF THIS NOTICE TO CHALLENGE THE ACCURACY OF THE INFORMATION CONTAINED HEREIN."

(b) An individual wishing to challenge the accuracy of the reviewed criminal history record information must, within 30 days of the date the information is received, submit the Challenge Form to the repository identifying therein the portion or portions of the record being challenged and providing his correct version of his record and an explanation of why he believes his version to be correct.

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(c) Upon receiving such written notification of a challenge, the repository maintaining the criminal history information being challenged shall conduct a review for accuracy, which review shall be completed within 60 days of the date the challenge is received. The responding repository has the burden of showing the accuracy of the information; except that, when the information has been contributed by another repository, the contributing repository shall, upon request by the responding repository, verify or correct such information within 30 days of the date the request for verification is received.

(d) The findings of the respository shall be communicated to the individual. If the repository determines that the record is correct, the respository shall so notify the individual and advise him of his right to appeal. Such notice and advice shall be delivered to the individual at the address indicated on the Challenge Form.

(e) If the challenge is determined to be valid, the repository shall so notify the individual by mail at the address indicated on the challenge form, and the repository shall insure that:

(1) the record is corrected;

(2) a certified and corrected copy of the record is provided to the individual;

(3) errors in criminal history record information previously disseminated to criminal justice agencies are eliminated and replaced with corrected information.

(4) the individual is supplied with the names and addresses of those noncriminal justice agencies and individuals which have received erroneous criminal history record information; and

(5) every reasonable effort is made to notify those individuals and noncriminal justice agencies to whom the erroneous information was disseminated; such notification shall include a certified and corrected copy of the record.

§ 195.6. Security.

Each criminal justice agency which collects, compiles, maintains, or disseminates criminal history record information shall develope and implement a plan to insure the security of all such information contained in its repositories. Such plan shall conform to the requirements of 18 Pa. C. S. § 9131, and a copy of the plan shall be submitted to the Attorney General by March 5, 1980. The Attorney General may approve or disapprove such plan or portions thereof and may require that different procedures by implemented to insure security.

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	Act 1977 No. 129 Sect. 1 Act Sect. 4(c)			X X
2. Privacy and Security Council	Act Sect. 4(i) Act Sect. 8 Reg. Sect. 3			X X X
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	Reg. Sect. 8(a) Act Sect. 4			X X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	Reg. Sect. 8(c)(1)			X
3.12 Authorizes to Private Sector				
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	Reg. Sect. 8(a) Act Sect. 4			X X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	Reg. Sect. 8(c)(1)			X
3.22 Authorizes to Private Sector	Reg. Sect. 8(c)(1)			X
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	Reg. Sect. 8(a) Act Sect. 4			X X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	Reg. Sect. 8(c)(1)			X
3.32 Authorizes to Private Sector	Reg. SEct. 8(c)(1)			X
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	Act Sect. 4(m) Reg. Sect. 9(a)			X X
5. Right to Challenge	Act Sect. 4(o) Act. Sect. 15 Reg. Sect. 9(b)			X X X
6. Judicial Review of Challenged Information	Act Sect. 16			X
7. Purging Non-Conviction Information				
8. Purging Conviction Information	Act Sect. 8			X

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information				
11. Removal of Disqualifications				
12. Right to State Non-Existence of Record				
13. Research Access	Reg. Sect. 8(c)(3)			X
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	Act #129 Sect. 1 Reg. Sect. 6			X X
14.2 Auditing Requirements	Reg. Sect. 10			X
14.3 Other Accuracy/Completeness Requirements	Act Sect. 8, 12(d) Reg. Sect. 6,7			X X
15. Dedication				
16. Civil Remedies				
17. Criminal Penalties	Act. Sect. 20			X
18. Public Records	32-1781			X
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security	Act Sect. 8			X
22.1 Physical (Building) Security	Reg. Sect. 14, 16			X
22.2 Administrative Security	Reg. Sect. 14, 17			X
22.3 Computer Security	Reg. Sect. 14, 16			X
23. Transaction Logs	Reg. Sect. 10 Reg. Sect. 9(e)(f)			X X
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)				
27. FOIA (Excluding CJI)				
28. Central State Repository	Act June 30, 1977 #129 Sect. 1, 13 Reg. Sect. 6			X X

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Code Civil Proc. - Evidence

§ 1781. Right to inspect and copy public documents

Every citizen has a right to inspect and take a copy of any public document of Puerto Rico, except as otherwise expressly provided by law.—Code Civil Proc., 1933, § 409.

(No. 129)
(Approved June 30, 1977)
AN ACT

To establish a Criminal Justice Information System in the Commonwealth of Puerto Rico.

STATEMENT OF MOTIVES

The Legislature of the Commonwealth of Puerto Rico recognizes the need to develop and establish a Criminal Justice Information System in the Commonwealth through which prompt and accurate information will be made available to the various agencies composing the Criminal Justice System, for the proper discharge of their duties and needs.

In cognition of the fact that the compilation, storage, use, diffusion, analysis and evaluation of information related to citizens is protected by the Constitution of the Commonwealth, the Legislature hereby establishes the necessary structure for the operation, control and coordination of the Criminal Justice Information System in the Commonwealth of Puerto Rico, so as to guarantee the right to individual privacy.

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This legislation vests in an Executive Board, consisting of high government officials, the duty of establishing the public policy for the System and creates a working group that will be responsible for the compliance of public policy directives at the operational levels of the System's components.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Creation of the Criminal Justice Information System.-

The Criminal Justice Information System is hereby created to provide full and accurate information to the various agencies that compose the Criminal Justice System for the proper functioning of their needs. It shall be composed by three agencies of the Executive Branch: the Department of Justice, the Puerto Rico Police and the Correctional Administration, and by the Judicial Branch, through the Courts Administration. The Criminal Justice Information System shall compile information on such individuals who are convicted, with regard to past and present events of the criminal proceedings and any action resulting therefrom, such as the arrest, filing of charges, sentencing and imprisonment.

The agencies composing the Criminal Justice System shall furnish the information to be compiled uninterruptedly, promptly

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and in accordance with the Rules of the Executive Board of the System.

Section 2.- Definitions.-

For the purposes of this Act, the following terms shall have the meanings stated below:

1.- System-means the Criminal Justice Information System.

2.- Executive Board-means the Executive Board of the Criminal Justice Information System.

3.- Administrative Director- means the Administrative Director of the Criminal Justice Information System.

4.- Working Group- means the personnel which includes the Data Center Director of the information system of each component of the Criminal Justice System of the Commonwealth and the Data Center Director of the Criminal Justice Information System.

Section 3.- Creation of the Executive Board of the Criminal Justice Information System.

An Executive Board of the Criminal Justice Information System is hereby established which shall be composed of the following officers:

The Secretary of Justice, who shall be its Chairman, the Administrative Director of the Courts, the Police Superintendent, and the Correctional Administration Director. The Executive Board shall be attached to the Committee to Fight Crime

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Section 4.- Powers and Duties of the Executive Board.-

The Executive Board shall have the following powers and duties:

a) To hold the meetings needed to carry out the purposes of this Act. It shall be the duty of the Secretary of Justice to call the meetings.

b) To establish the structure and determine the operational directives for the Criminal Justice Information System.

c) To establish and promulgate the rules and regulations for the System. Said rules and regulations shall have the force of law after the provisions of Act No. 112 of June 30, 1957, known as the 'Regulations Act of 1958', are complied with.

d) To amend the regulations mentioned in subsection (c), on occasion, as circumstances may warrant.

e) To establish priorities in the use of the equipment and technical facilities of the System.

f) To designate the Administrative Director of the System and the Director of the System's Data Center.

g) To establish the guidelines, supervise the operations, and evaluate the performance of the System's working group.

h) To consider the requests of other agencies within and without the Commonwealth Government and to adopt the necessary

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agreements to share such information as may be necessary or convenient for the Commonwealth.

i) To study and evaluate laws, directives and practices of the Federal Government and other state governments with regard to Criminal Justice Information Systems, for the improvement of the Commonwealth's System and to guarantee compliance with pertinent Federal legislation.

j) To investigate the allegations of violations of the provisions of this Act.

k) To promote statistical, criminological, procedural, administrative or substantive studies based on information contained in the System which will tend to improve the Criminal Justice System.

l) To create a Statistical Analysis Center, under a Director, who shall answer to the Executive Board and whose function shall be to analyze and interpret the information compiled by the System.

m) To issue a certificate, through the Puerto Rico Police's Criminal Identification Division which will contain data on the verdicts of guilt in the file of each person who may have a record in the Criminal Justice Information System as a result of having been sentenced by any Court of Justice of the Commonwealth.

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Any individual, upon prior verification of his identity, or through his designated attorney, may request and obtain the certificate of his criminal record. Any party in a civil or criminal case may also request and obtain the certificate of the criminal record of any party or witness in the case involved.

n) The decisions of the Executive Board shall be made with due regard to, and without interfering with the autonomy and separation of the legislative, executive and judicial powers, as established by the Constitution and the laws of the Commonwealth of Puerto Rico.

o) To review the adverse decisions of the Administrative Director in such cases where a citizen has filed a written claim alleging that the information compiled by the Information System is incorrect, incomplete or illegal.

Section 5.- Reports and Recommendations of the Executive Board.-

The Executive Board shall render an annual report to the Governor, to the Chief Justice of the Supreme Court, and to the Legislature of Puerto Rico, with respect to the compliance with this Act, including recommendations as to new legislation or amendments to existing legislation. The Executive Board may submit whatever internal reports and recommendations it

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deems necessary to the Governor, to the Chief Justice of the Supreme Court, to the Legislature, and to the Heads of the Puerto Rico Criminal Justice System's Agencies.

Section 6.- Personnel.-

The Executive Board shall appoint such personnel as it may deem necessary to carry out its functions.

Any System personnel not attached administratively to one of the agencies that compose the System, shall be attached administratively to the Committee to Fight Crime.

The personnel shall be subject to the provisions of Act No. 5 of October 14, 1975 known as "Puerto Rico Public Service Personnel Act".

Section 7.- Contracting of Services.-

The Executive Board may contract such professional and advisory services as it may need for the proper performance of its duties, for which the creation of a regular position is not practical or advisable, through the procedures established for the executive organizations of the Government.

The Executive Board is hereby authorized to contract the services of employees and officials of any department, agency, corporation or public instrumentality and of the municipalities, with the prior written consent of the executive head involved,

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outside their regular hours as public employees, and to pay them for the services rendered, without being subject to the provisions of Section 177 of the Political Code of 1902, as amended, or any other applicable law.

Section 8.- Security and Accuracy of Information-Protection of Individual Privacy.-

The Executive Board shall take all necessary measures, which shall not be limited to the promulgation of Rules and Regulations, to insure to the maximum degree, the security and accuracy of all information compiled through the System, and the protection of each individual's right to privacy in accordance with the constitutional principles of the Commonwealth. The Executive Board shall take all the necessary measures to ascertain that the Criminal Justice Information System will not record any data regarding the political affiliation or activities of any person. It shall also take all necessary measures to insure that all data regarding convictions, which a competent Court has ordered to be eliminated from the criminal record of a person be effectively and totally deleted from the Criminal Justice Information System, including, but without being limited to, the memories of any computers used by the System.

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Section 9.- Per Diems and Traveling Expenses.-

Executive Board members shall be entitled to be reimbursed for expenses they actually incur in the performance of their duties, pursuant to the standards established by regulation by the Secretary of the Treasury for such disbursements to public officials.

Section 10.- Administrative Director of the Criminal Justice Information System- Duties and Responsibilities.-

The Administrative Director shall have all such duties and responsibilities delegated to him by the Executive Board. He shall ascertain that the administrative and operational policies established by the Executive Board for the entire System are complied with, and shall coordinate the duties and responsibilities of the working group.

The Administrative Director shall be administratively attached to the Committee to Fight Crime.

Section 11.- Working Group of the Criminal Justice Information System.-

The working group shall consist of the Director of the Information System Data Center of each component of the Criminal Justice System of the Commonwealth, and the Director of the System's Data Center. The Working Group shall operate under the coordination of the Administrative Director.

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Section 12.- Working Group-Duties and Responsibilities.-

The Working Group shall have the following duties and responsibilities:

a) To enforce the operational directives issued by the Executive Board.

b) To render such reports as the Executive Board may request.

c) To advise the Executive Board regarding all the operational procedures of the System.

d) To insure compliance at the operational level, with all the Rules, Regulations and Directives issued by the Executive Board, particularly in connection with the accuracy of the information and the protection of the individual's right to privacy.

e) To follow-up the performance and quality of the services contracted and to perform such evaluations as may be required.

Section 13.- Criminal Justice Information System Data Center.-

The Data Center is composed of all the administrative and operational personnel and the physical equipment, including the central computer, the peripherals, the terminals and the feeding lines of the System. Any electronic equipment,

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as well as the personnel that is proper or unique to each of the components of the Criminal Justice System is excluded from the Data Center.

The Data Center shall serve as a computer resource, under the authority of the Executive Board, for all the criminal justice agencies. The compilation of information shall be the responsibility of the usuary agencies composing the System and emphasis shall be given to the exchange of information between the terminals, whenever feasible.

Section 14.- Acceptance of Economic Aid.-

The Executive Board shall be empowered to accept economic aid of any nature, including donations, whether in species or technical or professional services furnished by individuals, nonprofit institutions, the United States Government, or the Commonwealth of Puerto Rico, or any instrumentality, agency or political subdivision thereof.

The donations shall be accepted subject to applicable provisions of Act No. 57 of June 19, 1958 as amended, and the Rules and Regulations promulgated thereunder.

Section 15.- Administrative Review.-

Any person may file a written claim with the Administrative Director alleging that all or part of the information

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compiled by the Criminal Justice Information System under his name is incorrect, incomplete or illegal. The claim shall contain the grounds for the allegation, the complementing or substituting data that should allegedly appear in the record and the specific information which was allegedly illegally recorded.

The filing of a claim under the aforesaid procedures shall be performed within ten (10) days after delivery of the copy containing the requested information.

The Administrative Director shall carefully consider the claims filed pursuant to this section and shall notify the claimant of his decision to accept or reject the allegation, within a reasonable number of days after its filing. If the allegation is accepted, the notice shall state the corrective action taken.

If the allegation is rejected, the claimant may file a petition for reconsideration before the whole Executive Board within five (5) days after the Administrative Director's notice has been received.

The Executive Board shall consider the motion and notify the claimant within a reasonable number of days from the date of its filing.

The Executive Board may authorize a hearing to discuss the petitions for reconsideration.

Section 16.- Judicial Review.

a) Any person affected adversely by a Resolution or Order of the Executive Board, may request the Superior Court of the Commonwealth of Puerto Rico, for a judicial review of said resolution or order in the courtroom in the jurisdiction of the aggrieved party's residence, through a petition for review, at the discretion of the Court. The petition for review shall be filed in the Superior Court within fifteen (15) days from the date of notice of the Resolution or Order of the Executive Board.

b) The Order, Resolution or Regulation of the Executive Board shall be valid until the decision of the Superior Court reversing the ruling of the Executive Board becomes final and unappealable.

c) The review shall be executed by filing a petition for review in the Office of the Clerk of the Superior Court, stating the grounds on which it is based. The petitioner shall notify the Executive Board of the filing of the petition for review within the following five (5) days.

d) Once the petition for review is filed, the Executive Board shall send a certified copy of the documents which embody the record to the Court, within the term of ten (10) days from the date on which the filing was notified.

e) The Court shall review the decisions or orders of the Executive Board on the basis of the administrative record

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submitted. The review before the Superior Court shall be limited exclusively to questions of law. The findings of fact issued by the Executive Board shall be conclusive when substantially supported by evidence.

f) The petition for review made to the Superior Court shall not affect the validity of the Regulations, Order or Resolution of the Executive Board.

g) The Secretary of Justice shall be the legal representative of the Board before the Courts.

Section 17.- Appropriation of Funds.-

The amount of two hundred thousand (200,000) dollars is hereby appropriated from the Treasury of the Commonwealth of Puerto Rico's funds to match the Federal funds granted by the 'Law Enforcement Assistance Administration' to the Committee to Fight Crime, for the development of the System.

These funds shall not be identified with any particular fiscal year so that the matching of Federal funds may be more flexible.

The operating funds of the System shall be appropriated in the general annual budget through the Committee to Fight Crime.

Section 18.- Administration Services.-

The Committee to Fight Crime shall furnish all such budgetary, accounting, personnel and general service

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administration services, as may be necessary for the operation of the System.

Section 19.- Effectiveness.-

This Act shall take effect immediately after its approval, with the exception of subsection (M) of Section 4, which shall become effective by Executive Proclamation. Immediately after subsection (M) of Section 4 takes effect by Executive Proclamation, Act No. 254 of June 27, 1974 shall be repealed.

"Section 20.- Penalties

Any official or public employee who by willful or negligent omission fails to comply with any duty established by this Act or any Regulation approved hereunder shall be punished by imprisonment not to exceed six months or by a fine not to exceed five hundred (500) dollars, or both penalties, in the discretion of the court."

Section 9.- Effectiveness.- This Act shall take effect immediately after its approval.

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CJIS Regulations

REGULATION NUMBER I

To govern the safety and privacy of the Criminal Justice Information System in the Commonwealth of Puerto Rico.

SECTION 1 - Brief Title

These regulations shall be known by the name of "CJIS Safety and Privacy Regulations

SECTION 2 - Legal Base

These regulations are hereby adopted under the power and authority conferred upon the Executive Board of the Criminal Justice Information System according to Section 4(c) of Act Number 129 of June 30th 1977.

SECTION 3 - Purpose

These regulations formalizes the following principles of public policy:

a) Act Number 129 of June 30th 1977 established a Criminal Justice Information System in the Commonwealth of Puerto Rico that allows the providing of quick and correct informa-

tion into the various agencies which compose the Criminal Justice System so that they carry out their own functions and needs.

b) The keeping of the law as well as the quality of criminal justice improve through the responsible and proper exchange of correct, full and speedy information among the agencies of the Criminal Justice System.

c) Irresponsible disclosure of incomplete or incorrect criminal justice information, may harm the constitutionally protected rights of individual privacy and dignity.

d) That it is necessary and useful for the Commonwealth to incorporate into these Regulations the rules on safety and privacy for the Offender Based Tracking System and of the Computerized Criminal History promulgated by the Federal Government and by the Law Enforcement Assistance Administration.

SECTION 4 - Application

The provisions of these Regulations shall be applied to all government personnel that inter-

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vene in the carrying out of the System, as well as in administering it or supervising it, be that through the gathering of information its processing, evaluation or through the dissemination of the System's information, it shall be applied to any person that may have access, authorized by the Board or by the Administrative Director of the CJIS, to undertake studies or to carry out scientific research; also to any person that request and receives information included in the records of the CJIS's horizontal system; and all the agencies of criminal justice.

These Regulations apply to the information contained in the OBTS/CCH of the Commonwealth of Puerto Rico CJIS subject to the following exceptions:

a) Posters, announcements or list for identifying or arresting fugitives or wanted persons.

b) The original admission records kept by criminal justice agencies, such as the

Police Incident Book, chronologically compiled and whose dissemination is required by law or by tradition.

c) Court records on public judicial procedures.

d) Published judicial or administrative opinions.

e) Record of traffic violations kept by the Transportation and Public Works Department for purposes of issuing, suspending, revoking or renewing driver's licenses.

f) Executive Clemency Announcements.

g) Information related to the accusations for which the individual is presently within the criminal justice system.

h) Information which confirms the criminal record, disseminated to the news media or to any other person through specific questions on whether a certain individual was arrested, accused, convicted or acquitted on a specific date.

SECTION 5 - Definitions

a) Information - means data compiled by the Criminal Justice Information System on

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individuals processed as adults, consisting in identifiable descriptions, annotations of arrests, accusations, as well as any provision arising therefrom, sentences, imprisonment and parole.

b) Offender Based Tracking System (OBTS)-means the information contained in the SIJC on all current cases undergoing criminal procedure, the details and the stage at which any case may find itself as well as the number of cases throughout the entire system.

c) Computerized Criminal History (CCH)-means the person's criminal record, as well as the current situation on any case which is pending of said person, compiled by the CJIS.

d) Criminal Justice Administration - are those functions which are carried out by the Criminal Justice agencies, such as: the determination of probable cause for the arrest, fixing of bail, preliminary hearing, filing of accusation, judgement, verdict, sentence

and imprisonment. This term includes the activity of criminal identification and the gathering, storing and dissemination of the OBTS/CCH information.

e) Criminal Justice Agency - means the Puerto Rico Police, the Justice Department, the Courts Administration and the Corrections Administration when and to the extent in which they participate in the administration of criminal justice.

f) CJIS Horizontal System - means that portion of the CJIS to which all criminal justice agencies have access and which provides the information needs of said agencies; the OBTS/CCH information is processed through this system.

g) Vertical System - means that portion of the CJIS which is operated and controlled exclusively by a criminal justice agency to serve its particular informative and operational needs.

h) Disposition - means any authorized decision and reason for same, which postpones indefinitely or concludes the criminal justice procedures.

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i) Non-Conviction Data - means information on arrest without a disposition or order where more than a years time has elapsed from the time of the arrest and there is no accusation or denouncement pending; that a prosecutor has decided not to prosecute, or that the proceedings have been postponed indefinitely, as well as all acquittals, and dismissals.

j) Access - means the obtaining of information from OBTS or CCH.

k) Dissemination - means to render available to a person or to the public information contained in the the Criminal Justice Information System.

l) Safety - means all measures taken and adopted by the Executive Board, the Administrative Director, the work group and the criminal justice agencies for the protection of the System's information and the physical equipment, including the central computer, peripherals, terminals and lines, in order to prevent loss, damage, mutilation, destruction or unauthorized access.

m) Privacy - means the right that each person has, whose identity can be established through the System's mechanisms, to the necessary measures being adopted so that any information which may be contained on the CJIS records be not disseminated either partially or totally in violation of the laws and regulations which govern the CJIS.

n) Files - means any method of compiling and storing the CJIS's information.

o) Work Group - means the personnel composed by the Director of the Data Center of the Information System from each component part of the CJIS and the Director of the CJIS Data Center.

SECTION 6 - Complete and Correct Information

The CJIS Data Center shall be the central repository for the information. This information shall be kept complete and correct. The agencies' information centers shall provide the initial and disposition data within 30 days of an event having taken place. Said centers shall consult the CJIS Data Center before dissemination

of information on the computerized criminal record in order to make sure that the disposition data are the most recent ones, except in those cases where there may be time pressure and it is technically impossible for the deposit to respond within the required time.

SECTION 7 - Verification of Identity for the OBTS/CCH Files

The identity of each person which has been arrested for a felony shall be verified through fingerprints. All those persons arrested or summoned for misdemeanor shall also have their fingerprints taken. In cases of traffic violations related to driving in a state of drunkenness, or leaving the scene of an accident, as well as reckless driving when there has been an accident in which there have been persons wounded or hurt the accused shall also have his fingerprints taken. No fingerprints shall be entered on the OBTS/CCH Criminal Justice Information System where a person has been accused of minor traffic violations.

When the offender's identity has not been substan-

tiated or verified through fingerprints, the information shall not be entered on the CCH files. In its place the information shall be kept on the OBTS history file. This information shall be subject to the following additional restrictions:

a) A record shall be made for each separate offense of each person; the records are not to be merged.

b) This information shall not be disseminated to any agencies other than the Criminal Justice agencies.

c) The person involved shall be given the opportunity of access and review of the records being discussed before it is used.

d) If the person denies permission to use the record or if he states that it is not valid, the burden of proof falls upon the criminal justice agency and the record will not be used until a court declares it valid.

This procedure for the verification of identity imposes no limit on the authority or power of the

Police in their criminal investigations, criminal identification, and other circumstances where the law or the regulation authorizes the taking of fingerprints.

SECTION 8 - Limits to the dissemination of information contained in the OBTS/CCH.

a) It shall be the exclusive perrogative of the criminal justice agencies to have access to the OBTS/CCH in the CJIS horizontal system, as these are defined in Section 3 (b) of these Regulations, based on the need to know, which is inherent to its functions, in order to carry out the administration of criminal justice or for the evaluation of any candidates applying for jobs in said agencies.

b) No data from the OBTS/CCH within the vertical system of a criminal justice agency shall be disseminated outside of that agency unless there be an exception such as stated on Section 4.

c) The CJIS Executive Board or upon whom it delegates, will be able to authorize the dissemination of information contained in the OBTS/CCH if it has been properly requested

before and based on the following situations:

(1) Individuals and agencies for any purpose authorized by law, statute, executive order, court order or court decision, as interpreted by the proper local agencies or officials.

(2) Individuals and agencies with which the CJIS Executive Board has made a contract to provide services related to the administration of criminal justice which is the object of the agreement. The contract shall specifically authorize the access to necessary information, it shall limit its use to the agreed upon purpose, it shall keep the safety and privacy of the information in a manner which is consistent with this Regulation, and it shall provide sanctions for violations thereof.

(3) Individuals and agencies for the express purpose of carrying out investigations, evaluations, and statistical studies according to a contract with the CJIS Executive Board which specifically authorizes access to the information, limits the use of same to the agreed

upon purpose, keeps or maintains the privacy and safety of the information in a manner consistent with this Regulation and provides sanctions for any violations thereof.

d) The burden of establishing the need to know and the justification or authority to obtain access to the OBTS/CCH falls upon the individual or agency so requesting it.

e) Contracts made under articles 2 and 3 of previous subsection (c) shall specify the standard requisites related with the access to the OBTS/CCH, it shall specify the sanctions to be imposed in cases of noncompliance, it shall stipulate the terminal through which access shall be obtained, and any time limit for the access as well as any other condition deemed necessary.

f) Any individual or agency to whom access has been granted under articles 2 and 3 of subsection (c) in this Section shall establish his identity and authorization for access when and where it would be required by the CJIS Administrative Director or by the person in charge of the CJIS Data Center or of the authorized terminal.

g) With the exception of that which has been provided in subsections (a) and (c) (1) of this Section, no individual or agency shall confirm the existence of information contained in the OBTS/CCH.

h) The information on conviction can be disseminated through criminal record certificate, which shall contain guilty verdict data, filed in each person's record that by reason of having been sentenced in any court of the Commonwealth of Puerto Rico, has a record with the CJIS.

Any person, whose identity has been previously verified, or his appointed attorney, can require and obtain his own criminal record certificate. Likewise, any party to a criminal or civil case can require and obtain the criminal record certificate of party or witness in the case at hand.

The Criminal Record Certificate must contain information related to the person's full name on behalf of whom the record is issued, the number of the case, the court at which the sentence was decreed, date of sentence, offense for which he was condemned, penalty imposed, whether the sentence finds itself at an appeal stage, date of record, signature of official issuing the record.

No certificates shall be issued on a guilty verdict which has been revoked. When no information appears on criminal history a negative criminal record certificate shall be issued.

SECTION 9 - Individual Access and Review of Information Contained in the CCH:

a) Individual Access - Any person or his attorney or legal representative when duly authorized in writing shall have the right to examine the entire information contained in the CCH which appears at CJIS under his name. The request to examine the information shall be filed before the Administrative Director in the form approved by the CJIS Executive Board. Before granting any request to examine the information the Administrative Director shall require adequate information which may include the applicant's fingerprints. Through payment of the corresponding dues the applicant shall be provided with a copy from the CCH for purposes of challenge or correction.

b) Allegation of inaccurate information, incomplete or kept without the authorization of the Law - Any person may file a written and

sworn statement before the Administrative Director alleging that either all or part of the information contained in the CCH of the CJIS which appears on his record under his name is inaccurate, incomplete or that there is no authorization by law to include it. The statement must contain grounds for the allegation, as well as the substitute facts or complementary data which allegedly must appear on the record and the specific data for whose inclusion it is alleged that no legal basis exists.

The filing of a claim under the previous procedure shall be done within ten (10) days following the issuance of a copy containing the requested information.

c) Acceptance or Rejection of Claims - The Administrative Director shall consider claims filed under subsection (b) of this Section and shall notify the claimant of this decision within 15 days of having received the claim. If the claim is accepted, the notification shall include mention of any corrective action which has been taken.

d) Administrative Revision - Any person who is not satisfied with the decision or the corrective

action taken by the Administrative Director with respect to the claims filed under subsection (b) of this Section, shall have 5 days from the date of receipt of notification to file a request or petition for reconsideration before the CJIS Executive Board. The CJIS Executive Board can designate examining officers whose task or function shall be to preside over the administrative hearings to be held on a Board level. The examiners shall submit a report unto the CJIS Board, who shall render a decision with grounds, which shall be notified to the claimant within 30 days following the date in which the petition for reconsideration was received.

e) Upon request by the person on behalf of whom the record has been corrected, the names of all agencies outside the criminal justice system to whom information was granted, shall be provided. It shall be the duty of the Administrative Director to notify to the person his right to demand the delivery of the corrected CCH to all agencies outside the Criminal Justice System to whom inaccurate, incomplete or incorrect information was supplied or kept without due authorization

by law.

f) Notification of Corrections - Whenever a change is effected in the CCH record, the Administrative Director shall notify the change on the record, to all criminal justice agencies, who in turn shall correct, within a reasonable time span, any system of manual and/or vertical records which they may have on the individual.

g) Notification to the National Crime Information Center of the Federal Bureau of Investigations - The National Crime Information Center of the Federal Bureau of Investigations shall be notified on any change made in the CCH record of a person.

h) Requests or Petitions for Revision of the CCH files of the National Crime Information Center of the Federal Bureau of Investigations - Any person, may try to obtain the information contained in the CCH of the National Crime Information Center of the Federal Bureau of Investigations, through the CJIS Administrative Director. Upon referring said petitions, the Administrative Director shall comply with the identification requisites

contained on Section 20.34 of the Criminal Justice Information System's Regulations of the United States Justice Department, Federal Register, Number 98, of May 20, 1973, as amended.

SECTION 10 - Annual Auditing

The CJIS Executive Board shall order an annual audit for each Criminal Justice agency in order to verify compliance with these Regulations. The CJIS Executive Board shall specify the types of records to be held back or kept for use in the auditing. These records shall include but shall not be confined to, the names of all persons and agencies outside the criminal justice system to whom information from the CCH was granted and the date on which said information was provided.

SECTION 11 - CJIS Administrative Director - Duties and Responsibilities :

The CJIS Administrative Director shall have all the duties and obligations that the Executive Board delegates upon him.

The Administrative Director shall coordinate the functions of the Work Group and shall supervise the operational activities of the CJIS Data Center

in order to guarantee the compliance with the Executive Board's directives. The CJIS Administrative Director shall be administratively assigned to the Crime Commission.

SECTION 12 - CJIS Work Group

Duties and Responsibilities

The Work Group shall have the following duties and responsibilities:

a) It shall implant the operational directives issued by the CJIS Executive Board.

b) It shall render those reports which the Executive Board shall require from time to time.

c) It shall advise the Executive Board in respect to each and every one of the operational procedures which have arisen in the CJIS.

d) It shall make sure that all regulations rules and directives issued by the Executive Board are complied with at the operational level, specially in respect to the safety of the information and the protection of the right to privacy.

e) It shall supervise both the rendering of services contracted for and their quality, and shall carry out the necessary evaluations.

SECTION 13 - CJIS Data Center

The Data Center is made up of the entire operational and administrative personnel, and the physical equipment, including the central computer, the peripherals, the terminals as well as the System's lines. From the Data Center is excluded any hardware, and that personnel which pertains to each one of the Criminal Justice System's component.

The Data Center shall serve as a computer resource under the authority of the Executive Board for all the Criminal Justice Agencies. The compiling of the information shall be the responsibility of the using agencies which make up the System and the exchange of information among the terminals shall be emphasized as long as it is feasible. The Data Center shall respond to the Executive Board's policy directives through the Administrative Director in everything relating to the work and supervision of this personnel. Said Data Center shall be located at the Headquarters of the Puerto Rico Police.

SECTION 14 - Safety of the CJIS Data Center

The Executive Board in coordination with the Police shall work out and shall set up a safety or security system for the due protection of the Data Center and its files, from unauthorized access, damage or destruction. The Data Center is responsible for the training on regulations about safety and privacy to all its personnel.

SECTION 15 - Criminal Identification Division

The Police shall keep the function of taking and classifying fingerprints and its file. Also, the Police shall keep the manual files containing the records which support and back the OBTS/CCH files.

SECTION 16 - Safety of the Data Support Centers -

The installation of data support centers shall be confined to criminal justice agencies. Each agency is responsible, for the physical safety of all terminals set up within its premises. To that end, the CJIS Executive Board in coordination with each agency shall approve an Administrative Manual that contains rules for the due protection of its corresponding center. The Administrative Director and the Director for the Data Center shall

be responsible for the inspection of each center so as to secure compliance with safety measures.

SECTION 17 - Security Investigation

The CJIS Executive Board shall approve uniform rules and procedures for security investigations in the employment of the entire CJIS personnel. The CJIS personnel at the level of each agency shall be subject to said investigation by its respective agencies. The investigation of the Data Center personnel shall be carried out by the Police

SECTION 18 - Separability

If any disposition or provision within these Regulations or in the course of application of same to any person or circumstance be declared unconstitutional, said nullification shall not affect the other provisions nor the application of these Regulations that may have an effect without the need for the provisions or applications which would have been declared void, and to that end it is hereby declared that the provisions of these Regulations are separable the ones from the others.

SECTION 19 - Annulment

Any other rule, regulation or any part of these that may be in conflict with the provisions of these Regulations are hereby voided and annulled.

SECTION 20 - Amendments

Any amendment to these Regulations shall be approved in the manner provided for in Section 21 and shall comply with the requisites provided by Act Number 112 of June 30, 1957, as amended, and known as "The Regulations Act of 1958".

SECTION 21 - Administrative Orders

a) In any case in which through these Regulations the Executive Board must undertake an interpretation or take any action relative to these Regulations or must amend these Regulations, it shall issue forth an Administrative Order.

b) The Administrative Order shall consist of a document that shall have the following characteristics:

(i) It shall be a written document that states or expresses that deals with or that has to do with an Administrative Order promulgated by virtue of these Regulations.

(ii) It shall point out the section and its contents in these Regulations in accordance with which the Administrative Order is being promulgated, including an explanation of the way in which the contents of the Order furthers the purposes of the Regulations.

(iii) It shall be authorized by the Executive Board and certified by the CJIS Administrative Director without being able to delegate this particular function.

(iv) An excerpt of each administrative order shall be published in two newspapers of general circulation. This publication shall be made within the twenty-five days following the date of filing in the State Department.

SECTION 23 - Date of Effectiveness

These Regulations shall go into effect once approval has been obtained by the Board and once all the requisites provided by Act Number 112 of June 30, 1957 as amended, and known as the "Regulations Act of 1958" have been complied with.

Approved by the CJIS Executive Board in February 23, 1978.

CERTIFIED CORRECT:

MIGUEL GIMENEZ MUÑOZ
PRESIDENT
CJIS EXECUTIVE BOARD

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority				
2. Privacy and Security Council				
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	12-1-4			X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	12-1-4			X
3.12 Authorizes to Private Sector	12-1-4			X
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	12-1-4			X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	12-1-4			X
3.22 Authorizes to Private Sector	12-1-4			X
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	12-1-4			X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	12-1-4			X
3.32 Authorizes to Private Sector	12-1-4			X
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	38-2-3			
5. Right to Challenge				
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information	12-1-12	X		
8. Purging Conviction Information	12-1-13	X		

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information				
11. Removal of Disqualifications	12-1-13	X		
12. Right to State Non-Existence of Record				
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	12-1-10 12-1-11	X X		
14.2 Auditing Requirements				
14.3 Other Accuracy/Completeness Requirements	12-1-7, 12-1-8	X		
15. Dedication				
16. Civil Remedies	12-1-12	X		
17. Criminal Penalties				
18. Public Records	38-2-1			X
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security				
22.1 Physical (Building) Security				
22.2 Administrative Security				
22.3 Computer Security				
23. Transaction Logs				
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)	38-2-1			X
27. FOIA (Excluding CJI)	38-2-1			X
28. Central State Repository	12-1-7,9	X		

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Rhode Island General Laws
Title 12

CHAPTER 1
IDENTIFICATION AND APPREHENSION OF CRIMINALS

SECTION.		SECTION.	
12-1-4.	Division of criminal identification — Chief and assistants.	12-1-12.	Destruction of records of persons acquitted.
12-1-11.	Photographs and descriptive information as to persons convicted.	12-1-13.	Removal and destruction of records subsequent to conviction for misdemeanor.

12-1-4. Division of criminal identification — Chief and assistants. — There shall be a division of criminal identification in the department of the attorney-general to be in charge of a chief who shall be appointed by the attorney-general to serve at the pleasure of the attorney-general, and who shall devote all his time to the duties of his office. The said chief with the approval of the attorney-general may appoint such assistants as he may deem necessary to carry out the work of the division, within the limits of any appropriation made for such purpose, and may with the approval of the attorney-general discontinue the employment of any such assistants at any time. Said chief shall perform the functions required by §§ 12-1-5 to 12-1-12, inclusive. In addition to availability of records to law enforcement agencies and officers, the records shall be made available to any attorney of record in any criminal action, and any officials of businesses which are required by federal or state law or regulation to effectuate a criminal background check of potential or prospective employees. Such information shall be confidential and shall be used only by the employer for the employee's application of employment.

History of Section.
G.L., ch. 135, § 1, as enacted by P.L. 1927, ch. 977, § 1; P.L. 1935, ch. 2250, § 31; G.L. 1938, ch. 620, § 1; impl. am. P.L. 1939, ch. 660, § 40; G.L. 1956, § 12-1-4; P.L. 1977, ch. 239, § 1.

12-1-11. Photographs and descriptive information as to persons convicted. — In the case of every offense for which an indictment has been found or an information filed and in which the offender has been found guilty and sentenced, or has pleaded guilty or nolo, the attorney-general shall cause to be taken a photograph, and the name, age, weight, height, and a general description of such offender, and his fingerprints in accordance with the fingerprint system of identification of criminals and a history of the offender as shown upon trial. In the case of all offenses triable in the superior court for the counties of Providence and Bristol the attorney-general shall cause such fingerprints, photograph and other information to be taken by his department and in the case of all offenses triable in any

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other county he may make such arrangements for the taking of such fingerprints, photographs and information as may to him seem most desirable. In the case of offenses other than those that are indictable, for which an offender is committed under a sentence of imprisonment for a period of six (6) months or more, the warden or keeper of a place of detention or penal institution other than institutions designed primarily for the detention of juveniles, to which an offender is committed, shall cause to be taken, unless the court otherwise orders, a like description, photograph, fingerprints and history of such person. Such description, photographs, fingerprints and history shall be taken by persons in the service of the state appointed by the attorney-general for that purpose. All such descriptions, photographs, fingerprints and identifying matter shall be transmitted forthwith to the attorney-general.

History of Section.
G. L., ch. 135, § 6, as enacted by P. L. 1927, ch. 977, § 1; P. L. 1928, ch. 1191, § 1; G. L. 1938, ch. 620, § 6; impl. am. P. L. 1939, ch. 660, § 40; G. L. 1956, § 12-1-11; P. L. 1974, ch. 118, § 9.

12-1-12. Destruction of records of persons acquitted. — Any fingerprint, photograph, physical measurements or other record of identification, heretofore or hereafter taken by or under the direction of the attorney general, the superintendent of state police, the member or members of the police department of any city or town or any other officer authorized by this chapter to take the same, of a person under arrest, prior to the final conviction of such person for the offense then charged, shall be destroyed by the officer or department having the custody or possession thereof within forty-five (45) days after said acquittal or other exoneration if such person is acquitted or otherwise exonerated from the offense with which he is charged, provided, that such person shall not have been previously convicted of any offense involving moral turpitude. Any person who shall violate any provision of this section shall be fined not exceeding one hundred dollars ($100).

History of Section.
P. L. 1911, ch. 719, §§ 1, 2; G. L. 1923, ch. 135, §§ 1, 2; G. L., ch. 135, § 9, as enacted by P. L. 1927, ch. 977, § 1; G. L. 1938, ch. 620, § 7; impl. am. P. L. 1939, ch. 660, § 40; G. L. 1956, § 12-1-12; P. L. 1975, ch. 285, § 1.

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NOTES TO DECISIONS

ANALYSIS

1. In general.
2. Statute of limitations.
3. Admissibility of evidence.
4. Destruction of evidence.
5. Mug shots.

1. In General.

In civil rights action brought by plaintiffs complaining of police brutality and racism, where defendants attempted to introduce mug shots taken of three of the plaintiffs in the course of a previous arrest to show that they were in a good physical state and plaintiffs objected because they contended the photographs were barred by this section, since the language of this section applied to persons who have been exonerated and, since the charges were dismissed, which is a form of exoneration, and no further charges were brought, plaintiffs were within the scope of the section. Coalition of Black Leadership v Doorley (1972), 349 FSupp 127.

2. Statute of Limitations.

As there was no indication that defendants had spent the time since the dismissal of charges against plaintiffs which were filed when their mug shots were taken investigating the incident in preparation for indictment, and as the legislature vested the right of privacy in plaintiffs at the time of dismissal of the charges and, since there had been no showing of any preparations of other charges that would delay vesting of these rights as provided by this section, plaintiffs were entitled to demand the destruction of such mug shots and were not required to wait for the running of the three-year statute of limitations on the felony charge. Coalition of Black Leadership v Doorley (1972), 349 F Supp 127.

3. Admissibility of Evidence.

Although the U.S. district court in an action by plaintiffs against city officers for police brutality and racism lacked jurisdiction to order destruction of mug shots taken by members of the police department of three of plaintiffs during a previous arrest which defendants wanted to introduce as evidence to show plaintiffs were not mistreated, the court, nevertheless, had jurisdiction to rule on whether these photographs could be excluded as being illegally held evidence. Coalition of Black Leadership v Doorley (1972), 349 F Supp 127.

4. Destruction of Evidence.

The remedy of destruction of photographs provided for in this section was mandatory and not permissive and as photographs were not destroyed on request, they were destroyed by court order and the person violating the statute was fined. Coalition of Black Leadership v Doorley (1972), 349 F Supp 127.

5. Mug Shots.

The right to destruction of mug shots taken of plaintiffs by police at the time of their arrest and for which they were then exonerated was vested in plaintiffs by this section and, therefore, admission of such photographs as evidence in another action was precluded. Coalition of Black Leadership v Doorley (1972), 349 F Supp 127.

12-1-13. Removal and destruction of records subsequent to conviction for misdemeanor. — Any fingerprint, photograph, physical measurements or other record of identification, heretofore or hereafter taken by or under the direction of the attorney-general, the superintendent of state police, the member or members of the police department of any city or town, or any other officer authorized by this chapter to take the same, of a person charged with a misdemeanor, prior to the final conviction and subsequent to conviction of such person for such misdemeanor, shall be destroyed by the officer or department having the custody or possession thereof upon demand of the person so photographed, measured or otherwise identified, provided, that such person has no record of conviction of a felony, and

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provided that such person has successfully completed any sentence or probationary period imposed upon him in connection with such misdemeanor and has not been charged with or convicted of any other crime for a period of five (5) years from the date of completion of such sentence or probationary period, and further provided that such person was not originally charged with a felony or a misdemeanor carrying as a possible penalty a fine of more than five hundred dollars ($500) or a penalty of one (1) year or more which charge was reduced to a lesser offense.

For all intents and purposes, the destruction of the aforementioned conviction shall operate and have the same effect and force in any and every situation and case as though no such arrest, arraignment or conviction ever occurred or took place.

The court in which such conviction took place shall, if any person shall refuse to carry out any of the [provisions] of this section, upon petition under oath setting forth sufficient facts to warrant such destruction of records, assign said petition for hearing within ten (10) days provided at least five (5) days notice of such hearing is given to the person having custody of such record by mailing him a copy of said petition with the time, date and place of hearing endorsed thereon.

If the court finds that the petitioner is entitled to relief, it shall order such destruction as provided herein.

History of Section.
As enacted by P. L. 1976, ch. 71, § 1.

Compiler's Notes.
The bracketed word was substituted for "provision."

NOTES TO DECISIONS

ANALYSIS

1. In general.
2. Limitations.

1. In General.

Petitioner was not entitled to expunction of criminal records where he was convicted in 1962 of violation of former § 11-45-1, which remained a felony section in that year. Petition of Crepeau-Cross, — R.I. —, 385 A.2d 658 (1978).

2. Limitations.

The one-year limitation on jurisdiction contained in § 9-21-2 does not govern this section. Petition of Crepeau-Cross, — R.I. —, 385 A.2d 658 (1978).

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TITLE 38
PUBLIC RECORDS

CHAPTER.
2. Access to Public Records, §§ 38-2-1 to 38-2-12.

CHAPTER 2
ACCESS TO PUBLIC RECORDS

SECTION.
38-2-1. Purpose.
38-2-2. Definitions.
38-2-3. Records of public bodies.
38-2-4. Costs assessed.
38-2-5. Effect of chapter on broader agency publication — Existing rights — Judicial records and proceedings.
38-2-6. Commercial use of public records prohibited.
38-2-7. Denial of access.
38-2-8. Administrative appeals.
38-2-9. Jurisdiction of state courts.
38-2-10. Burden of proof.
38-2-11. Right supplemental.
38-2-12. Severability.

38-2-1. Purpose. — The public's right to access to records pertaining to the policy-making responsibilities of government and the individual's right to dignity and privacy are both recognized to be principles of the utmost importance in a free society. The purpose of this chapter is to facilitate public access to governmental records which pertain to the policy-making functions of public bodies and/or are relevant to the public health, safety, and welfare. It is also the intent of this chapter to protect from disclosure information about particular individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy.

History of Section.
As enacted by P.L. 1979, ch. 202, § 1.

Comparative Legislation. Access to public records:
Conn. Gen. Stat. §§ 1-19 — 1-19b.
Mass. Ann. Laws ch. 66, § 10.

38-2-2. Definitions. — As used in this chapter:

(a) "Public body" means any executive, legislative, judicial, regulatory, administrative body of the state or any political subdivision thereof; including, but not limited to any department, division, agency, commission, board, office, bureau, authority, any school, fire, or water district, or any other agency of Rhode Island state or local government which exercises governmental functions. Judicial bodies are included in this definition only in respect to their administrative functions; provided that, records kept pursuant to the provisions of chapter 16 of title 8 are exempt from the operation of this chapter.

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(b) "Public business" means any matter over which the public body has supervision, control, jurisdiction, or advisory power.

(c) "Supervisor of the regulatory body" means the chief or head of a section having enforcement responsibility for a particular statute or set of rules and regulations within a regulatory agency.

(d) "Public record" is written or recorded information made or received by a public body relating to public business. For purposes of this chapter, the following records shall not be deemed public:

(1) All records which are identifiable to an individual applicant for benefits, clients, patient, student, or employee; including, but not limited to, personnel, medical treatment, welfare, employment security, and pupil records and all records relating to a client/attorney relationship and to a doctor/patient relationship.

(2) Trade secrets and commercial or financial information obtained from a person, firm, or corporation, which is of a privileged or confidential nature.

(3) Child custody and adoption records, and records of illegitimate births.

(4) All records maintained by law enforcement agencies for criminal law enforcement. Provided, however, any records reflecting the initial arrest of a person and any complaint filed in court by a law enforcement agency shall be public.

(5) Any records which would not be available by law or rule of court to an opposing party in litigation.

(6) Scientific and technological secrets and the security plans of military and law enforcement agencies, the disclosure of which would endanger the public welfare and security.

(7) Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymiity has been requested of the public body with respect to said contribution by the contributor.

(8) Reports and statements of strategy or negotiation involving labor negotiations or collective bargaining.

(9) Reports and statements of strategy or negotiation with respect to the investment or borrowing of public funds, until such time as those transactions are entered into.

(10) Any record of a discussion allowed to be held in executive session.

(11) Preliminary drafts, notes, impressions, memoranda, working papers and work products.

(12) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or promotion or academic examinations provided, however, that a person shall have the right to review the results of his or her examination.

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(13) Correspondence of or to elected officials with or relating to those they represent, and correspondence of or to elected officials in their official capacities.

(14) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned, provided the law of eminent domain shall not be affected by this provision.

(15) All tax returns.

(16) All investigatory records of public bodies pertaining to possible violations of statute, rule or regulation other than records of final actions taken provided that all records prior to formal notification of violations or noncompliance shall not be deemed to be public.

(17) Records of individual test scores on professional certification and licensing examinations.

(18) Requests for advisory opinions until such time as the public body issues its opinion.

(19) Records, reports, opinions, information, and statements required to be kept confidential by federal or state law, rule, rule of court, or regulation or by state statute.

However, any reasonably segregable portion as determined by the chief administrative officer of the public body of a record excluded by this section shall be deemed a public record after the deletion of the information which is the basis of the exclusion, if disclosure of said segregable portion does not violate the intent of this section.

(e) "Chief administrative officer" means the highest authority of the public body as defined in § 38-2-2(a).

History of Section.
As enacted by P.L. 1979, ch. 202, § 1.

38-2-3. Records of public bodies. — Except as provided in § 38-2-2 (d), all records maintained or kept on file by any public body, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to inspect and/or copy such records at such reasonable time as may be determined by the custodian thereof.

Each public body shall make, keep, and maintain written or recorded minutes of its public meetings.

Each public body shall establish procedures regarding access to public records.

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If a public record is in active use or in storage and, therefore, not available at the time a person requests access, the custodian shall so inform the person and make an appointment for said citizen to examine such records as expeditiously as they may be made available.

Any public body which maintains its records in a computer storage system shall provide a printout of any data properly identified.

Nothing herein shall be construed as requiring a public body to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect such public records was made.

History of Section.
As enacted by P.L. 1979, ch. 202, § 1.

38-2-4. Costs assessed. — Any reasonable expense involved in the retrieval and/or copying of such records may be levied as a charge to the person requesting such printout or copy. The public body must so inform the person making the request at the time when the request is received and must provide an estimate of the costs which will be incurred.

History of Section.
As enacted by P.L. 1979, ch. 202, § 1.

38-2-5. Effect of chapter on broader agency publication — Existing rights — Judicial records and proceedings. — Nothing in this chapter shall be:

(a) construed as preventing any public body from opening its records concerning the administration of such body to public inspection; or

(b) construed as limiting the right of access as it existed prior to [July 1, 1979], of an individual who is the subject of a record to the information contained herein; or

(c) deemed in any manner to affect the status of judicial records as they existed prior to [July 1, 1979], nor to affect the rights of litigants in either criminal or civil proceedings, including parties to administrative proceedings, under the laws of discovery of this state.

History of Section.
As enacted by P.L. 1979, ch. 202, § 1.

Compiler's Notes. The bracketed date was substituted for "the effective date of this chapter" by the compiler.

As enacted this section bore the heading "Opening of records."

38-2-6. Commercial use of public records prohibited. — No person or business entity shall use information obtained from public

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records pursuant to this chapter to solicit for commercial purposes; or to obtain a commercial advantage over the party furnishing that information to the public body. Anyone who, knowingly and willfully, violates the provision of this section shall, in addition to any civil liability, be punished by a fine of not more than five hundred dollars ($500) and/or imprisonment for no longer than one (1) year.

History of Section.
As enacted by P.L. 1979, ch. 202, § 1.

38-2-7. Denial of access. — Any denial of the right to inspect or copy records provided for under this chapter shall be made to the person requesting such right by the public body official who has custody or control of the public record in writing giving the specific reasons for the denial within ten (10) business days of such request. Failure to comply with a request to so inspect or copy such public record within such ten (10) business day period, shall be deemed to be a denial. Except that for good cause, this limit may be extended for a period not to exceed thirty (30) business days

History of Section.
As enacted by P.L. 1979, ch. 202, § 1.

38-2-8. Administrative appeals. — Any person denied the right to inspect a record of a public body by the custodian of said record may petition the chief administrative officer of that public body for a review of the determinations made by his/her subordinate. The chief administrative officer shall make a final determination whether or not to allow public inspection within ten (10) business days after the submission of the review petition.

If the chief administrative officer determines that the record is not subject to public inspection, the person seeking disclosure may institute proceedings for injunctive or declaratory relief in the superior court of the county where the record is maintained.

History of Section.
As enacted by P.L. 1979, ch. 202, § 1.

38-2-9. Jurisdiction of state courts. — Jurisdiction to hear and determine civil actions brought under this chapter is hereby vested in the superior court.

Said court may examine any record which is the subject of such a suit in camera to determine whether said record or any part thereof may be withheld from public inspection under the terms of this chapter.

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Actions brought under this chapter may be advanced on the calendar upon motion of the petitioner made in accordance with the rules of civil procedure of the superior court.

History of Section.
As enacted by P.L. 1979, ch. 202, § 1.

38-2-10. Burden of proof. — In all actions brought under this chapter, the burden shall be on the public body to demonstrate that the record in dispute can be properly withheld from public inspection under the terms of this chapter.

History of Section.
As enacted by P.L. 1979, ch. 202, § 1.

38-2-11. Right supplemental. — The right of the public to inspect public records created by this chapter shall be in addition to any other right to inspect records maintained by public bodies.

History of Section.
As enacted by P.L. 1979, ch. 202, § 1.

Compiler's Notes. As enacted this section bore the heading "Right to inspect."

38-2-12. Severability. — If any provision of this chapter is held unconstitutional, such decision shall not affect the validity of the remainder of this chapter. If the application of this chapter to a particular record is held invalid, such decision shall not affect other applications of this chapter.

History of Section.
As enacted by P.L. 1979, ch. 202, § 1.

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	23-3-130	X		
2. Privacy and Security Council				
3. Dissemination Regulations	Gen. 23-3-130, 140	X		
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	Reg. 73-23	X		
3.11 Authorizes to Govt. Non-Criminal Justice Agencies				
3.12 Authorizes to Private Sector				
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	Reg. 73-23	X		
3.21 Authorizes to Govt. Non-Criminal Justice Agencies				
3.22 Authorizes to Private Sector				
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	Reg. 73-23	X		
3.31 Authorizes to Govt. Non-Criminal Justice Agencies				
3.32 Authorizes to Private Sector				
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	Reg. 73-24	X		
5. Right to Challenge	Reg. 73-24	X		
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information	17-1-40 Reg. 73-21	X X		
8. Purging Conviction Information	Reg. 73-21	X		

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information	Reg. 73-21	X		
10. Sealing Conviction Information	Reg. 73-21	X		
11. Removal of Disqualifications				
12. Right to State Non-Existence of Record				
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	Reg. 73-30 23-3-120, 130; 23-1-90; 23-3-40	X X		
14.2 Auditing Requirements				
14.3 Other Accuracy/Completeness Requirements	Reg. 73-20, 73-21, 73-22	X		
15. Dedication				
16. Civil Remedies	30-4-100 23-1-90	X		X
17. Criminal Penalties	23-1-90 30-4-110	X		X
18. Public Records	30-4-10			X
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security				
22.1 Physical (Building) Security	Reg. 73-23	X		
22.2 Administrative Security	Reg. 73-23	X		
22.3 Computer Security	Reg. 73-23	X		
23. Transaction Logs	Reg. 73-22	X		
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)				
27. FOIA (Excluding CJI)				
28. Central State Repository	23-3-110	X		

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South Carolina Code
Title 30

CHAPTER 3
Freedom of Information
[Repealed]

§§ 30–3–10 to 30–3–50. Repealed by 1978 Act No. 593 § 13, eff July 18, 1978.

Cross references—
As to Freedom of Information Act now, see §§ 30–4–10 et seq.

CHAPTER 4 [New]
Freedom of Information Act

SEC.

30–4–10. Short title.
30–4–20. Definitions.
30–4–30. Right to inspect or copy public records; fees; notification as to public availability of record.
30–4–40. Matters exempt from disclosure.
30–4–50. Certain matters declared public information.
30–4–60. Meetings of public bodies shall be open.
30–4–70. Meetings which may be closed; procedure; circumvention of chapter; disruption of meeting; executive sessions of General Assembly.
30–4–80. Notice of meetings of public bodies.
30–4–90. Minutes of meetings of public bodies.
30–4–100. Injunctive relief; costs and attorney's fees.
30–4–110. Penalties.

§ 30–4–10. Short title.

This chapter shall be known and cited as the "Freedom of Information Act".

HISTORY: 1978 Act No. 593 § 1, eff July 18, 1978.

Research and Practice References—
66 Am Jur 2d, Records and Recording Laws §§ 12 et seq.
76 CJS, Records §§ 35 et seq.

ATTORNEY GENERAL'S OPINIONS

The Freedom of Information Act would not require the disclosure of: (1) personnel information obtained in a preliminary audit data gathering; (2) a preliminary audit report presented as an administrative briefing; (3) informal working documents collected in preparation for conducting an audit and preparing a final audit report. 1976–77 Op Atty Gen, No 77-133, p 111.

The South Carolina Freedom of Information Act does not require that the public be given access to personnel files and employment applications maintained on employees of the South Carolina House of Representatives. 1976–77 Op Atty Gen, No 77-45, p 45.

Under the decision of the South Carolina Supreme Court in Cooper v. Bales, the State of South Carolina and its political subdivisions should release only the employee's salary, grade and job description upon request under the FOIA. Any further disclosure could

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come only if the employee authorizes the release or if a court of competent jurisdiction orders such disclosure. 1976–77 Op Atty Gen, No 77-243, p 180.

Under the provisions of the Freedom of Information Act, records containing charges against residential homebuilders should be made available for public inspection and copying once a proper disposition has been made of the charge by the Residential Homebuilders' Commission. 1976–77 Op Atty Gen, No 77-288, p 219.

When the Administrator of Consumer Affairs receives information relating to consumer complaints, pursuant to Code Section 8–800.387 [1976 Code § 37–6–117] (1962), and the complaint is later determined to be groundless, the Administrator is not required to release such information under the South Carolina Freedom of Information Act. 1976–77 Op Atty Gen, No 77-132, p 111.

(1) The Freedom of Information Act does not require the disclosure of how each member of a school board voted in executive session.

(2) The school board may elect officers in a public meeting by secret ballot, but any written record of the vote by name would be public information after the votes are tabulated. 1976–77 Op Atty Gen, No 77-279, p 214.

§ 30–4–20. Definitions.

(a) "Public body" means any department of the State, any state board, commission, agency and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts and special purpose districts, or any organization, corporation or agency supported in whole or in part by public funds or expending public funds and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, such bodies as the South Carolina Public Service Authority and the South Carolina State Ports Authority.

(b) "Person" includes any individual, corporation, partnership, firm, organization or association.

(c) "Public record" includes all books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of or retained by a public body. Records such as income tax returns, medical records, hospital medical staff reports, scholastic records, adoption records and other records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of this chapter nor shall the definition of public records include those records concerning which the public body, by favorable public vote of three-fourths of the membership taken within fifteen working days after receipt of written request, concludes that the public interest is best served by not disclosing them. *Provided,* however, nothing herein shall authorize or require the disclosure of records of the Board of Financial Institutions pertaining to applications and surveys for charters and branches of banks and

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savings and loan associations or surveys and examinations of such institutions required to be made by law.

(d) "Meeting" means the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.

(e) "Quorum" unless otherwise defined by applicable law means a simple majority of the constituent membership of a public body.

HISTORY: 1978 Act No. 593 § 3, eff July 18, 1978.

ALR and L Ed Annotations—

Validity, construction, and application of statutory provisions relating to public access to public records. 82 ALR3d 19.

CASE NOTES

UNDER FORMER § 30-3-20

Preliminary proposals to be placed on a school board agenda which are circulated to the school board members several days before the meeting, need not be released prior to the meeting under Code 1962 § 1-20.1 [Code 1976 § 30-3-20], where full disclosure is made at the meeting. Cooper v Bales (1977) 268 SC 270, 233 SE2d 306.

ATTORNEY GENERAL'S OPINIONS

Booking information formerly kept in the jail book, but now kept on individual cards, must be made available to the public under the State's Freedom of Information Act (FOIA). 1976-77 Op Atty Gen, No 77-303, p 231.

Generally, telephone billing records for State agencies would be public records and thus available for public inspection under the Freedom of Information Act, unless non-disclosure can be shown to be in the best public interest. 1976-77 Op Atty Gen, No 77-199, p 149.

The minutes of meetings of public bodies such as school district Board of Trustees are public records and thus available for inspection and copying by the public under § 1-20.1. [1976 Code § 30-3-20] 1976-77 Op Atty Gen, No 77-154, p 129.

Incident and Supplemental Reports prepared by Sheriff's Officers and submitted for filing in the Records Division of the Police Service Bureau do not constitute public records subject to disclosure under the Freedom of Information Act if it can be shown that the public interest is best served by nondisclosure. Any public record subject to disclosure under the Freedom of Information Act may be viewed in its original form, but records not subject to disclosure could be publicized in summary form. 1976-77 Op Atty Gen, No 77-187, p 142.

When the Administrator of Consumer Affairs receives information relating to consumer complaints, pursuant to Code Section 8-800.387 [1976 Code § 37-6-117] (1962), and the complaint is later determined to be groundless, the Administrator is not required to release such information under the South Carolina Freedom of Information Act. 1976-77 Op Atty Gen, No 77-132, p 111.

Police criminal investigatory files are not subject to inspection and copying under the Freedom of Information Act, since they are most likely not

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"public records" within the meaning of § 30–3–20 and § 30–3–30. 1976–77 Op Atty Gen, No 77-193, p 146.

The Freedom of Information Act would not require the disclosure of: (1) personnel information obtained in a preliminary audit data gathering; (2) a preliminary audit report presented as an administrative briefing; (3) informal working documents collected in preparation for conducting an audit and preparing a final audit report. 1976–77 Op Atty Gen, No 77-133, p 111.

Under the decision of the South Carolina Supreme Court in Cooper v. Bales, the State of South Carolina and its political subdivisions should release only the employee's salary, grade and job description upon request under the FOIA. Any further disclosure could come only if the employee authorizes the release or if a court of competent jurisdiction orders such disclosure. 1976–77 Op Atty Gen, No 77-243, p 180.

(1) The Freedom of Information Act does not require the disclosure of how each member of a school board voted in executive session; (2) The school board may elect officers in a public meeting by secret ballot, but any written record of the vote by name would be public information after the votes are tabulated. 1976–77 Op Atty Gen, No 77-279, p 214.

The South Carolina Freedom of Information Act does not require that the public be given access to personnel files and employment applications maintained on employees of the South Carolina House of Representatives. 1976–77 Op Atty Gen, No 77-45, p 45.

Under the provisions of the Freedom of Information Act, records containing charges against residential homebuilders should be made available for public inspection and copying once a proper disposition has been made of the charge by the Residential Homebuilders' Commission. 1976–77 Op Atty Gen, No 77-288, p 219.

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UNDER FORMER § 30–3–20

The Consumer Health Council does not fall under the provisions of the Freedom of Information Act if it is entirely financed by federal funds. 1974–75 Op Att'y Gen, No 4037, p 109.

Personnel records of a faculty member at a state institution of higher learning, including confidential evaluations of teaching performance, are not public records under the Freedom of Information Act if such materials are considered scholastic records, or if such disclosure is not in the public interest or if such materials are the product of a valid executive session. 1974–75 Op Att'y Gen, No 4191, p 242.

Records maintained in the Tax Assessor's office of Dillon County of the number of acres or lots owned by individuals, the appraised value of such acreage or lots, and the taxes levied thereon are public records within the intent and meaning of the Freedom of Information Act and should be made available for inspection and review in accordance with the Act. 1975–76 Op Atty Gen, No 4229, p 10.

Both the State and Federal estate tax returns filed with the Tax Commission are public records within the meaning of the South Carolina Freedom of Information Act, and therefore must be made available to the public for examination and inspection. 1975–76 Op Atty Gen, No 4320, p 139.

The mailing list for the Department of Agriculture's Publication "The Market Bulletin" is public information. 1975–76 Op Atty Gen, No 4354, p 183.

The South Carolina Freedom of Information Act does not require disclosure of certain items in personnel files of public employees. 1975–76 Op Atty Gen, No 4363, p 197.

The study of alcohol and drug abuse among students in the Sumter County school districts is subject to disclosure under the Freedom of Infor-

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mation Act, unless it would be adverse to the public interest to release the study publicly. 1975–76 Op Atty Gen, No 4508, p 369.

The Freedom of Information Act requires disclosure of specific public employees' salaries. 1975–76 Op Atty Gen, No 4526, p 390.

The contempt power under 1962 Code § 15-1095.23 [1976 Code § 14-21-650] defines the punishment for violations of 1962 Code §§ 15-1095.17(d), 15-1095.40, 15-1095.41, § 1-20, et seq. [1976 Code §§ 14-21-590, 14-21-30, 14-21-150]; the Freedom of Information Act has no effect on these sections. 1975–76 Op Atty Gen, No 4541, p 409.

§ 30–4–30. Right to inspect or copy public records; fees; notification as to public availability of records.

(a) Any person has a right to inspect or copy any public record of a public body, except as otherwise provided by § 30–4–40, in accordance with reasonable rules concerning time and place of access.

(b) The public body may establish and collect fees not to exceed the actual cost of searching for or making copies of records. Such records shall be furnished at the lowest possible cost to the person requesting the records. Records shall be provided in a form that is both convenient and practical for use by the person requesting copies of the records concerned, if it is equally convenient for such public body to provide the records in such form. Documents may be furnished when appropriate without charge or at a reduced charge where the agency determines that wavier or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Fees shall not be charged for examination and review to determine if such documents are subject to disclosure. Nothing in this chapter shall prevent the custodian of the public records from charging a reasonable hourly rate for making records available to the public nor requiring a reasonable deposit of such costs prior to searching for or making copies of the records.

(c) Each public body, upon written request for records made under this chapter, shall within fifteen days (excepting Saturdays, Sundays and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor. Such a determination shall constitute the final opinion of the public body as to the public availability of the requested public record.

HISTORY: 1978 Act No. 593 § 4, eff July 18, 1978.

Research and Practice References—

66 Am Jur 2d, Records and Recording Laws §§ 12 et seq.

76 CJS, Records §§ 35 et seq.

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CASE NOTES
UNDER FORMER § 30-3-30

Code 1962 §§ 1-20.2 and 1-20.3 [Code 1976 §§ 30-3-30 and 30-3-40] are to be harmoniously construed to preclude disclosure of minutes of executive sessions. Cooper v Bales (1977) 268 SC 270, 233 SE2d 306.

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The Freedom of Information Act would not require the disclosure of: (1) personnel information obtained in a preliminary audit data gathering; (2) a preliminary audit report presented as an administrative briefing; (3) informal working documents collected in preparation for conducting an audit and preparing a final audit report. 1976-77 Op Atty Gen, No 77-133, p 111.

When the Administrator of Consumer Affairs receives information relating to consumer complaints, pursuant to Code Section 8-800.387 [1976 Code § 37-6-117] (1962), and the complaint is later determined to be groundless, the Administrator is not required to release such information under the South Carolina Freedom of Information Act. 1976-77 Op Atty Gen, No 77-132, p 111.

Incident and Supplemental Reports prepared by Sheriff's Officers and submitted for filing in the Records Division of the Police Service Bureau do not constitute public records subject to disclosure under the Freedom of Information Act if it can be shown that the public interest is best served by nondisclosure. Any public record subject to disclosure under the Freedom of Information Act may be viewed in its original form, but records not subject to disclosure could be publicized in summary form. 1976-77 Op Atty Gen, No 77-187, p 142.

The South Carolina Freedom of Information Act does not require the public disclosure of law enforcement records of internal investigations into allegations of peace officers' misconduct. 1976-77 Op Atty Gen, No 77-363, p 288.

Police criminal investigatory files are not subject to inspection and copying under the Freedom of Information Act, since they are most likely not "public records" within the meaning of § 30-3-20 and § 30-3-30. 1976-77 Op Atty Gen, No 77-193, p 146.

The South Carolina Freedom of Information Act does not require that the public be given access to personnel files and employment applications maintained on employees of the South Carolina House of Representatives. 1976-77 Op Atty Gen, No 77-45, p 45.

Under the decision of the South Carolina Supreme Court in Cooper v. Bales, the State of South Carolina and its political subdivisions should release only the employee's salary, grade and job description upon request under the FOIA. Any further disclosure could come only if the employee authorizes the release or if a court of competent jurisdiction orders such disclosure. 1976-77 Op Atty Gen, No 77-243, p 180.

(1) The Freedom of Information Act does not require the disclosure of how each member of a school board voted in executive session; (2) The school board may elect officers in a public meeting by secret ballot, but any written record of the vote by name would be public information after the votes are tabulated. 1976-77 Op Atty Gen, No 77-279, p 214.

Under the provisions of the Freedom of Information Act, records containing charges against residential homebuilders should be made available for public inspection and copying once a proper disposition has been made of the charge by the Residential Homebuilders' Commission. 1976-77 Op Atty Gen, No 77-288, p 219.

A county council cannot pass an ordinance or resolution restricting public records from discovery under the Freedom of Information Act. Failing to release the contents of a proposed county ordinance, emergency ordinance or resolution until such item is brought up for a vote would violate

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the Freedom of Information Act, where such items are prepared and available prior to the meeting. 1976–77 Op Atty Gen, No 77-164, p 134.

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UNDER FORMER § 30–3–30

The Freedom of Information Act compels the Commission of the Blind to allow the inspection of its records used in mailing publications. 1974–75 Op Atty Gen, No 3985, p 56.

The Freedom of Information Act would require disclosure of employee names at the Medical University, their position, earnings, and insurance coverage; however, information such as sex, date of birth, marital status, and number of children of the employees relates solely to private matters which do not affect the performance of any public duty. 1974–75 Op Att'y Gen, No 4004, p 75.

Vehicle towing records of a sheriff may be open for public inspection. Employment applications for county employees and some portions of accident reports should not be open to public disclosure. 1974–75 Op Att'y Gen, No 4197, p 246.

The Greenwood County Hospital Board must comply with the provisions of the Freedom of Information Act, 1962 Code § 1-20, et seq. [1976 Code § 30–3–10 et seq.], as amended. 1975–76 Op Atty Gen, No 4477, p 337.

Public agencies may set up reasonable requirements for viewing and copying public records. However, care must be taken to insure that such procedures do not inordinately restrict public access to these public records. 1975–76 Op Atty Gen, No 4512, p 373.

§ 30–4–40. Matters exempt from disclosure.

(a) The following matters may be exempt from disclosure under the provisions of this chapter:

(1) Trade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential.

(2) Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy, including, but not limited to, information as to gross receipts contained in applications for business licenses.

(3) Records of law enforcement and public safety agencies not otherwise available by law that were compiled in the process of detecting and investigating crime if the disclosure of the information would harm the agency by:

(A) Disclosing identity of informants not otherwise known;

(B) The premature release of information to be used in a prospective law enforcement action;

(C) Disclosing investigatory techniques not otherwise known outside the government;

(D) By endangering the life, health or property of any person.

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(4) Matters specifically exempted from disclosure by statute or law.

(5) Documents incidental to proposed contractual arrangements and proposed sale or purchase of property.

(6) Salaries of employees below the level of department head; *provided,* however, that complete salary schedules showing compensation ranges for each employee classification, including longevity steps, where applicable shall be made available.

(7) Correspondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships.

(8) Memoranda, correspondence and working papers in the possession of individual members of the General Assembly or their immediate staffs, *provided,* however, nothing herein shall be construed as limiting or restricting public access to source documents or records, factual data or summaries of factual data, papers, minutes or reports otherwise considered to be public information under the provisions of this chapter and not specifically exempted by any other provisions of this chapter.

(b) If any public record contains material which is not exempt under item (a) of this section, the public body shall separate the exempt and nonexempt material available for examination.

HISTORY: 1978 Act No. 593 § 5, eff July 18, 1978; 1980 Act No. 495, eff June 11, 1980.

Effect of Amendments—

The 1980 amendment added item (8) to subsection (a).

Research and Practice References—

66 Am Jur 2d, Records and Recording Laws §§ 19 et seq.
76 CJS, Records § 36.

ALR and L Ed Annotations—

Court's power to determine, upon government's claim of privilege, whether official information contains state secrets or other matters disclosure of which is against public interest. 32 ALR2d 391.

What are reports prepared or used by "agency responsible for the regulation or supervision of financial institutions," within Freedom of Information Act (5 USCS § 552(b)(8)). 48 ALR Fed 814.

CASE NOTES

UNDER FORMER § 30-3-40

Code 1962 §§ 1-20.2 and 1-20.3 [Code 1976 §§ 30-3-30 and 30-3-40] are to be harmoniously construed to preclude disclosure of minutes of executive sessions. Cooper v Bales (1977) 268 SC 270, 233 SE2d 306.

Administrative briefings may be held in executive session when no action is taken. Cooper v Bales (1977) 268 SC 270, 233 SE2d 306.

Administrative briefings of a school board may be held in executive session. Cooper v Bales (1977) 268 SC 270, 233 SE2d 306.

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Proposed school budgets which are incomplete working papers used for administrative briefings, and which contain personnel matters, are privileged under Code 1962 § 1-20.3 [Code 1976 § 30-3-40]. Cooper v Bales (1977) 268 SC 270, 233 SE2d 306.

School board minutes protected by the attorney-client privilege would not be released under discovery motions made in a Freedom of Information Act suit. Cooper v Bales (1977) 268 SC 270, 233 SE2d 306.

ATTORNEY GENERAL'S OPINIONS

Incident and Supplemental Reports prepared by Sheriff's Officers and submitted for filing in the Records Division of the Police Service Bureau do not constitute public records subject to disclosure under the Freedom of Information Act if it can be shown that the public interest is best served by nondisclosure. Any public record subject to disclosure under the Freedom of Information Act may be viewed in its original form, but records not subject to disclosure could be publicized in summary form. 1976-77 Op Atty Gen, No 77-187, p 142.

The Freedom of Information Act would not require the disclosure of: (1) personnel information obtained in a preliminary audit data gathering; (2) a preliminary audit report presented as an administrative briefing; (3) informal working documents collected in preparation for conducting an audit and preparing a final audit report. 1976-77 Op Atty Gen, No 77-133, p 111.

When the Administrator of Consumer Affairs receives information relating to consumer complaints, pursuant to Code Section 8-800.387 [1976 Code § 37-6-117] (1962), and the complaint is later determined to be groundless, the Administrator is not required to release such information under the South Carolina Freedom of Information Act. 1976-77 Op Atty Gen, No 77-132, p 111.

Under § 30-3-40(b) of the Freedom of Information Act, the State Budget and Control Board should vote in public session to conduct executive sessions, setting the time and place of such sessions and stating the purpose thereof. Decisions made in an executive session must be confirmed thereafter in a public open session. 1976-77 Op Atty Gen, No 77-325, p 261.

Under the decision of the South Carolina Supreme Court in Cooper v. Bales, the State of South Carolina and its political subdivisions should release only the employee's salary, grade and job description upon request under the FOIA. Any further disclosure could come only if the employee authorizes the release or if a court of competent jurisdiction orders such disclosure. 1976-77 Op Atty Gen, No 77-243, p 180.

The South Carolina Freedom of Information Act does not require that the public be given access to personnel files and employment applications maintained on employees of the South Carolina House of Representatives. 1976-77 Op Atty Gen, No 77-45, p 45.

(1) The Freedom of Information Act does not require the disclosure of how each member of a school board voted in executive session; (2) The school board may elect officers in a public meeting by secret ballot, but any written record of the vote by name would be public information after the votes are tabulated. 1976-77 Op Atty Gen, No 77-279, p 214.

Under the provisions of the Freedom of Information Act, records containing charges against residential homebuilders should be made available for public inspection and copying once a proper disposition has been made of the charge by the Residential Homebuilders' Commission. 1976-77 Op Atty Gen, No 77-288, p 219.

A school principal possesses the requisite amount of independent authority and control to be considered a "department head" for purposes of the new Freedom of Information Act, and hence, his salary is subject to disclosure. 1978 Op Atty Gen, No 78-158, p 189.

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ATTORNEY GENERAL'S OPINIONS

UNDER FORMER § 30-3-40

A City Council may discuss in closed session and vote in closed session upon a proposed purchase price to be offered for the acquisition of property by the City. 1974–75 Op Att'y Gen, No 3928, p 12.

Budget sub-committees of school boards may meet in non-public executive sessions for the purpose of discussing and drafting budget proposals where any final budget will be discussed publicly and voted on by the full school board before being adopted. 1975–76 Op Atty Gen, No. 4356, p 186.

Information relating to teacher pay classifications could be available to the public under the Freedom of Information Act. 1975–76 Op Atty Gen, No 4362, p 196.

The South Carolina Freedom of Information Act does not require disclosure of certain items in personnel files of public employees. 1975–76 Op Atty Gen, No 4363, p 197.

A memorandum written by a Social Services employee to a county social services board, containing materials which are suitable for discussion by the agency in executive session, is not discoverable under the South Carolina Freedom of Information Act. 1975–76 Op Atty Gen, No 4383, p 219.

The North Charleston ordinance providing for the holding of conference meetings adopts the Freedom of Information Act as a guideline for the determination of when those meetings should be public. 1975–76 Op Atty Gen, No 4407, p 252.

The Greenwood County Hospital Board must comply with the provisions of the Freedom of Information Act, 1962 Code § 1-20, et seq. [1976 Code § 30–3–10 et seq.], as amended. 1975–76 Op Atty Gen, No 4477, p 337.

§ 30–4–50. Certain matters declared public information.

Without limiting the meaning of other sections of this chapter, the following categories of information are specifically made public information subject to the restrictions and limitations of §§ 30–4–20, 30–4–40 and 30–4–70 of this chapter:

(1) The names, sex, race, title and dates of employment of all employees and officers of public bodies;

(2) Administrative staff manuals and instructions to staff that affect a member of the public;

(3) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(4) Those statements of policy and interpretations of policy, statute and the Constitution which have been adopted by the public body;

(5) Written planning policies and goals and final planning decisions;

(6) Information in or taken from any account, voucher or contract dealing with the receipt or expenditure of public or other funds by public bodies;

(7) The minutes of all proceedings of all public bodies and all

votes at such proceedings, with the exception of all such minutes and votes taken at meetings closed to the public pursuant to § 30–4–70.

HISTORY: 1978 Act No. 593 § 6, eff July 18, 1978.

Research and Practice References—

66 Am Jur 2d, Records and Recording Laws §§ 19 et seq.
76 CJS, Records § 36.

ALR and L Ed Annotations—

What preliminary data gathered by public departments or officials constitute "public records" within the right of access, inspection, and copying by private persons. 85 ALR 2d 1105.

ATTORNEY GENERAL'S OPINIONS

The Freedom of Information Act would not require the disclosure of: (1) personnel information obtained in a preliminary audit data gathering; (2) a preliminary audit report presented as an administrative briefing; (3) informal working documents collected in preparation for conducting an audit and preparing a final audit report. 1976–77 Op Atty Gen, No 77-193, p 111.

When the Administrator of Consumer Affairs receives information relating to consumer complaints, pursuant to Code Section 8–800.387 [1976 Code § 37–6–117] (1962), and the complaint is later determined to be groundless, the Administrator is not required to release such information under the South Carolina Freedom of Information Act. 1976–77 Op Atty Gen, No 77-132, p 111.

The South Carolina Freedom of Information Act does not require that the public be given access to personnel files and employment applications maintained on employees of the South Carolina House of Representatives. 1976–77 Op Atty Gen, No 77-45, p 45.

Under the decision of the South Carolina Supreme Court in Cooper v. Bales, the State of South Carolina and its political subdivisions should release only the employee's salary, grade and job description upon request under the FOIA. Any further disclosure could come only if the employee authorizes the release or if a court of competent jurisdiction orders such disclosure. 1976–77 Op Atty Gen, No 77-243, p 180.

(1) The Freedom of Information Act does not require the disclosure of how each member of a school board voted in executive session; (2) The school board may elect officers in a public meeting by secret ballot, but any written record of the vote by name would be public information after the votes are tabulated. 1976–77 Op Atty Gen, No 77-279, p 214.

Under the provisions of the Freedom of Information Act, records containing charges against residential homebuilders should be made available for public inspection and copying once a proper disposition has been made of the charge by the Residential Homebuilders' Commission. 1976–77 Op Atty Gen, No 77-288, p 219.

§ 30–4–60. Meetings of public bodies shall be open.

Every meeting of all public bodies shall be open to the public unless closed pursuant to § 30–4–70 of this chapter.

HISTORY: 1978 Act No. 593 § 7, eff July 18, 1978.

ALR and L Ed Annotations—

Validity, construction, and application of statutes making public proceedings open to the public. 38 ALR3d 1070.

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ATTORNEY GENERAL'S OPINIONS

Under the decision of the South Carolina Supreme Court in Cooper v. Bales, the State of South Carolina and its political subdivisions should release only the employee's salary, grade and job description upon request under the FOIA. Any further disclosure could come only if the employee authorizes the release or if a court of competent jurisdiction orders such disclosure. 1976–77 Op Atty Gen, No 77-243, p 180.

The South Carolina Freedom of Information Act does not require that the public be given access to personnel files and employment applications maintained on employees of the South Carolina House of Representatives. 1976–77 Op Atty Gen, No 77-45, p 45.

(1) The Freedom of Information Act does not require the disclosure of how each member of a school board voted in executive session; (2) The school board may elect officers in a public meeting by secret ballot, but any written record of the vote by name would be public information after the votes are tabulated. 1976–77 Op Atty Gen, No 77-279, p 214.

Under the provisions of the Freedom of Information Act, records containing charges against residential homebuilders should be made available for public inspection and copying once a proper disposition has been made of the charge by the Residential Homebuilders' Commission. 1976–77 Op Atty Gen, No 77-288, p 219.

§ 30–4–70. Meetings which may be closed; procedure; circumvention of chapter; disruption of meeting; executive sessions of General Assembly.

(a) A public body may hold a meeting closed to the public for one or more of the following reasons:

(1) Discussion of employment, appointment, compensation, promotion, demotion, discipline or release of an employee, or the appointment of a person to a public body; *provided,* however, that if an adversary hearing involving the employee, other than under a grievance procedure provided in Chapter 17 of Title 8 of the 1976 Code, is held such employee shall have the right to demand that the hearing be conducted publicly.

(2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against said agency of a claim.

(3) Discussion regarding the development of security personnel or devices.

(4) Investigative proceedings regarding allegations of criminal misconduct.

(5) Prior to going into executive session the public agency shall vote in public on the question and when such vote is favorable the presiding officer shall announce the purpose of the executive session. Any formal action taken in executive session shall thereafter be ratified in public session prior to such action becoming

dom of Information Act, records containing charges against residential homebuilders should be made available for public inspection and copying once a proper disposition has been made of the charge by the Residential Homebuilders' Commission. 1976–77 Op Atty Gen, No 77-288, p 219.

§ 30–4–100. Injunctive relief; costs and attorney's fees.

(a) Any citizen of the State may apply to the circuit court for injunctive relief to enforce the provisions of this chapter in appropriate cases provided such application is made no later than sixty days following the date which the alleged violation occurs or sixty days after ratification of such act in public session whichever comes later. The court may order equitable relief as it deems appropriate.

(b) If a person seeking such relief prevails, he may be awarded reasonable attorney fees and other costs of litigation. If such person prevails in part, the court may in its discretion award him reasonable attorney fees or an appropriate portion thereof.

HISTORY: 1978 Act No. 593 § 11, eff July 18, 1978.

Research and Practice References—
66 Am Jur 2d, Records and Recording Laws § 31.
76 CJS, Records § 41.

ATTORNEY GENERAL'S OPINIONS

Under the decision of the South Carolina Supreme Court in Cooper v. Bales, the State of South Carolina and its political subdivisions should release only the employee's salary, grade and job description upon request under the FOIA. Any further disclosure could come only if the employee authorizes the release or if a court of competent jurisdiction orders such disclosure. 1976–77 Op Atty Gen, No 77-243, p 180.

The South Carolina Freedom of Information Act does not require that the public be given access to personnel files and employment applications maintained on employees of the South Carolina House of Representatives. 1976–77 Op Atty Gen, No 77-45, p 45.

(1) The Freedom of Information Act does not require the disclosure of how each member of a school board voted in executive session. (2) The school board may elect officers in a public meeting by secret ballot, but any written record of the vote by name would be public information after the votes are tabulated. 1976–77 Op Atty Gen, No 77-279, p 214.

Under the provisions of the Freedom of Information Act, records containing charges against residential homebuilders should be made available for public inspection and copying once a proper disposition has been made of the charge by the Residential Homebuilders' Commission. 1976–77 Op Atty Gen, No 77-288, p 219.

§ 30–4–110. Penalties.

Any person or group of persons who willfully violates the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one

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hundred dollars or imprisoned for not more than thirty days for the first offense, shall be fined not more than two hundred dollars or imprisoned for not more than sixty days for the second offense and shall be fined three hundred dollars or imprisoned for not more than ninety days for the third or subsequent offense.

HISTORY: 1978 Act No. 593 § 12, eff July 18, 1978.

Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority				
2. Privacy and Security Council				
3. Dissemination Regulations	Gen. 23-5-2			
Conviction Information	Reg. 2:02:03:06		X	
3.10 Authorizes to Criminal Justice Agencies	23-6-9 23-5-2	X X		
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	Reg. 2:02:03:06		X	
3.12 Authorizes to Private Sector				
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information	Reg. 2:02:03:06		X	
3.20 Authorizes to Criminal Justice Agencies	23-6-9 23-5-2	X X		
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	Reg. 2:02:03:06		X	
3.22 Authorizes to Private Sector				
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information	23-6-9	X		
3.30 Authorizes to Criminal Justice Agencies	23-5-2	X		
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	Reg. 2:02:03:06		X	
3.32 Authorizes to Private Sector				
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only	23-6-11	X		
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	Reg. 2:02:03:01		X	
5. Right to Challenge	Reg. 2:02:03:02		X	
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information				
8. Purging Conviction Information				

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information	39-17-114	X		
10. Sealing Conviction Information				
11. Removal of Disqualifications	39-17-114	X		
12. Right to State Non-Existence of Record				
13. Research Access				
14. Accuracy and Completeness	Reg. 2:02:04:01 Reg. 2:02:02:01		X X	
14.1 Disposition Reporting Requirements	23-5-4, 23-5-8 23-6-16	X X		
14.2 Auditing Requirements	Reg. 2:02:02:04,05		X	
14.3 Other Accuracy/Completeness Requirements	Reg. 2:02:02:01 Reg. 2:02:02:03		X X	
15. Dedication				
16. Civil Remedies	Reg. 2:02:04:03		X	
17. Criminal Penalties	23-6-18	X		
18. Public Records	1-27-1	X		
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security				
22.1 Physical (Building) Security				
22.2 Administrative Security				
22.3 Computer Security				
23. Transaction Logs	Reg. 2:02:02:05		X	
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)	1-27-1	X		
27. FOIA (Excluding CJI)				
28. Central State Repository	23-5-1,2 23-6-1	X X		

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	E.O. 9			
2. Privacy and Security Council				
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies				
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	10-7-507			X
3.12 Authorizes to Private Sector	10-7-507			X
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies				
3.21 Authorizes to Govt. Non-Criminal Justice Agencies				
3.22 Authorizes to Private Sector				
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies				
3.31 Authorizes to Govt. Non-Criminal Justice Agencies				
3.32 Authorizes to Private Sector				
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	Reg. 1/27/76	X		
5. Right to Challenge	Reg. 1/27/76	X		
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information	40-2109 40-4001, 4002			X X
8. Purging Conviction Information				

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information				
11. Removal of Disqualifications				
12. Right to State Non-Existence of Record				
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	38-503			X
14.2 Auditing Requirements				
14.3 Other Accuracy/Completeness Requirements	38-503			X
15. Dedication				
16. Civil Remedies				
17. Criminal Penalties	10-7-505 40-4004			X X
18. Public Records	10-7-503			X
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security				
22.1 Physical (Building) Security				
22.2 Administrative Security				
22.3 Computer Security				
23. Transaction Logs				
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)	10-7-507			X
27. FOIA (Excluding CJI)	10-7-503			X
28. Central State Repository	E.O. 9 38-503			

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Tennessee Code Annotated

10-7-503. Records open to public inspection. — All state, county and municipal records shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any such citizen, unless otherwise provided by law or regulations made pursuant thereto. [Acts 1957, ch. 285, § 1; T.C.A., § 15-304.]

Section to Section References. Sections 10-7-503 — 10-7-506 are referred to in § 10-7-505.

Law Reviews. Contested Cases Under the Tennessee Uniform Administrative Procedures Act (L. Harold Levinson), 6 Mem. St. U.L. Rev. 215.

Protecting Privacy from Government Invasion: Legislation at the Federal and State Levels, 8 Mem. St. U.L. Rev. 783.

Publication Under the New Tennessee Uniform Administrative Procedures Act and the Public's Right to Know (John Beasley), 6 Mem. St. U.L. Rev. 187.

Collateral References. Records ⇐ 14.

10-7-504. Confidential records. — (a) The medical records of patients in state hospitals and medical facilities, and the medical records of persons receiving medical treatment, in whole or in part, at the expense of the state, shall be treated as confidential and shall not be open for inspection by members of the public. Additionally, all investigative records of the Tennessee bureau of criminal identification shall be treated as confidential and shall not be open to inspection by members of the public. The information contained in such records shall be disclosed to the public only in compliance with a subpoena or an order of a court of record, however, such investigative records of the Tennessee bureau of criminal identification shall be open to inspection by elected members of the general assembly if such inspection is directed by a duly adopted resolution of either house or of a standing or joint committee of either house. Records shall not be available to any member of the executive branch except those directly involved in the investigation in the Tennessee bureau of investigation itself and the governor himself. The records, documents and papers in the possession of the military department which involve the security of the United States and/or the state of Tennessee, including but not restricted to national guard personnel records, staff studies and investigations, shall be treated as confidential and shall not be open for inspection by members of the public.

(b) The records of students in public educational institutions shall be treated as confidential. Information in such records relating to academic performance, financial status of a student or his parent or guardian, medical or psychological treatment or testing shall not be made available to unauthorized personnel of the institution or to the public or any agency, except those agencies authorized by the educational institution to conduct specific research or otherwise authorized by the governing board of the institution, without the consent of the student involved or the parent or guardian of a minor student attending any institution of elementary or

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secondary education, except as otherwise provided by law or regulation pursuant thereto and except in consequence of due legal process or in cases when the safety of persons or property is involved. The governing board of the institution, the state department of education, and the Tennessee higher education commission shall have access on a confidential basis to such records as are required to fulfill their lawful functions. Statistical information not identified with a particular student may be released to any person, agency, or the public; and information relating only to an individual student's name, age, address, dates of attendance, grade levels completed, class placement and academic degrees awarded may likewise be disclosed.

(c) Any record designated "confidential" shall be so treated by agencies in the maintenance, storage and disposition of such confidential records. These records shall be destroyed in such a manner that they cannot be read, interpreted, or reconstructed. The destruction shall be in accordance with an approved records disposition authorization from the public records commission.

(d)(1) The following books, records and other materials in the possession of the office of the attorney general and reporter which relate to any pending or contemplated legal or administrative proceeding in which the office of the attorney general and reporter may be involved shall not be open for public inspection:

(A) Books, records or other materials which are confidential or privileged by state law;

(B) Books, records or other materials relating to investigations conducted by federal law enforcement or federal regulatory agencies, which are confidential or privileged under federal law;

(C) The work product of the attorney general and reporter or any attorney working under his supervision and control; or

(D) Communications made to or by the attorney general and reporter or any attorney working under his supervision and control in the context of the attorney-client relationship;

(E) Books, records and other materials in the possession of other departments and agencies which are available for public inspection and copying pursuant to §§ 10-7-503 and 10-7-506. It is the intent of this section to leave subject to public inspection and copying pursuant to §§ 10-7-503 and 10-7-506 such books, records and other materials in the possession of other departments even though copies of the same books, records and other materials which are also in the possession of the attorney general's office are not subject to inspection or copying in the office of the attorney general, provided such records, books and materials are available for copying and inspection in such other departments.

(2) Books, records and other materials made confidential by this subsection which are in the possession of the office of the attorney general and reporter shall be open to inspection by the elected members of the general assembly if such inspection is directed by a duly adopted resolution of either house or of a standing or joint committee of either house and is required for the conduct of legislative business.

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(3) Except for the provisions of subdivision (2) hereof, the books, records and materials made confidential or privileged by this subdivision shall be disclosed to the public only in the discharge of the duties of the office of the attorney general. [Acts 1957, ch. 285, § 2; 1970 (Adj. S.), ch. 531, §§ 1, 2; 1973, ch. 99, § 1; 1975, ch. 127, § 1; 1976 (Adj. S.), ch. 552, § 1; 1976 (Adj. S.), ch. 777, § 1; 1977, ch. 152, § 3; 1978 (Adj. S.), ch. 544, § 1; 1978 (Adj. S.), ch. 890, § 2; T.C.A., § 15-305.]

Cross-References. Confidentiality of writings, records or tangible objects obtained by attorney general, § 8-636.

Records or papers in secretary of state's office relating to executive department and requiring secrecy, § 8-304(10).

Law Reviews. College and University Disciplinary Proceedings Under the Tennessee Uniform Administrative Procedures Act: Undue Process? (David C. Porteous), 7 Mem. St. U.L. Rev. 345.

Publication Under the New Tennessee Uniform Administrative Procedures Act and the Public Right to Know (John Beasley), 6 Mem. St. U.L. Rev. 187.

The Tennessee Department of Revenue and the Uniform Administrative Procedures Act (Mike Norton), 6 Mem. St. U.L. Rev. 303.

Collateral References. Validity, construction, and application of statutory provisions relating to public access to police records. 82 A.L.R.3d 19.

10-7-505. Violations. — Any official who shall violate the provisions of §§ 10-7-503 — 10-7-506 shall be deemed guilty of a misdemeanor. [Acts 1957, ch. 285, § 3; 1975, ch. 127, § 2; 1977, ch. 152, § 4; T.C.A., § 15-306.]

Cross-References. Penalty for misdemeanor where punishment not prescribed, § 39-105.

Law Reviews. Protecting Privacy From Government Invasion: Legislation at the Federal and State Levels, 8 Mem. St. U.L. Rev. 783.

Publication Under the New Tennessee Uniform Administrative Procedures Act and the Public's Right to Know (John Beasley), 6 Mem. St. U.L. Rev. 187.

10-7-506. Right to make copies of public records. — In all cases where any person has the right to inspect any such public records, such person shall have the right to take extracts or make copies thereof, and to make photographs or photostats of the same while such records are in the possession, custody and control of the lawful custodian thereof, or his authorized deputy; provided, however, the lawful custodian of such records shall have the right to adopt and enforce reasonable rules governing the making of such extracts, copies, photographs or photostats. [Acts 1957, ch. 285, § 4; T.C.A., § 15-307.]

Cross-References. Records or papers in office of secretary of state, § 8-304(10).

Section to Section References. This section is referred to in § 10-7-504.

Law Reviews. Protecting Privacy From Government Invasion: Legislation at the Federal and State Levels, 8 Mem. St. U.L. Rev. 783.

Publication Under the New Tennessee Uniform Administrative Procedures Act and the Public's Right to Know (John Beasley), 6 Mem. St. U.L. Rev. 187.

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10-7-507. Records of convictions of traffic and other violations — Availability. — Any public official having charge or custody of or control over any public records of convictions of traffic violations or any other state, county or municipal public offenses shall make available to any citizen, upon request, during regular office hours, a copy or copies of any such record requested by such citizen, upon the payment of a reasonable charge or fee therefor. Such official is authorized to fix a charge or fee per copy that would reasonably defray the cost of producing and delivering such copy or copies. [Acts 1974 (Adj. S.), ch. 581, § 1; T.C.A., § 15-308.]

Law Reviews. Protecting Privacy From Government Invasion: Legislation at the Federal and State Levels, 8 Mem. St. U.L. Rev. 783.

Publication Under the New Tennessee Uniform Administrative Procedures Act and the Public's Right to Know (John Beasley), 6 Mem. St. U.L. Rev. 187.

10-7-508. Access to records. — The director of the records management division, the state librarian and archivist, and the comptroller of the treasury or his designated representative for purposes of audit, shall be accorded access to and may examine and receive any public records or writings, whether or not they are subject to public inspection. They shall maintain inviolate any privileged or confidential information so acquired and any record writing so defined by law. [Acts 1978 (Adj. S.), ch. 544, § 2; T.C.A., § 15-309.]

Section to Section References. This section (formerly § 15-309) is referred to in § 62-625.

10-7-509. Disposition of records. — The disposition of all state records shall occur only through the process of an approved records disposition authorization. Records authorized for destruction shall be disposed of according to the records disposition authorization and shall not be given to any unauthorized person, transferred to another agency, political subdivision, private or semiprivate institution. [Acts 1978 (Adj. S.), ch. 544, § 2; T.C.A., § 15-310.]

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CHAPTER 5

BUREAU OF CRIMINAL IDENTIFICATION

SECTION.

38-501. Bureau created — Director — Divisions of bureau.

38-502. Criminal investigation division — Assistance to district attorney general — Powers — Investigations — Mitigation of prosecution by director.

38-503. Forensic services division — Employees — Duties — Supervision.

38-504. Personnel — Salaries — Benefits — Funds, supplies, equipment.

38-505. Retired agents — Identification card — Retention of service weapon.

38-506. Requests by governor for investigative records.

38-501. Bureau created — Director — Divisions of bureau. — (a)(1) There is created the Tennessee bureau of investigation which shall be a separate department of state government. References to the bureau of criminal identification elsewhere in the Code shall be deemed references to the bureau of investigation.

(2) The bureau shall be divided into two divisions, the criminal investigation division and the forensic services division, and the director shall have full control over the activities of each division.

(3) The bureau shall be provided with suitable office space, supplies and equipment to perform the duties and functions assigned to it.

(b)(1) A director shall be appointed to administer such department.

(2) The director's compensation shall be fixed at an amount no less than that provided for the commissioner of safety.

(3) The director shall be a person of experience and ability in the detection of crime and shall be appointed to a fixed term of office by the governor from a list of three (3) nominees submitted to him by a nominating commission composed of:

(A) Two (2) members to be nominated by the speaker of the senate and elected by resolution of the senate;

(B) Two (2) members to be nominated by the speaker of the house of representatives and elected by resolution of the house; and,

(C) The executive secretary of the Tennessee district attorneys general conference.

No person nominated by the speakers shall be a member of the general assembly and no more than one member nominated by each speaker and elected by each house shall be from the same political party. Members nominated by the speakers and elected by each house shall serve from the date of their election until January 1 of the year in which the term of the director expires. If no one (1) of the three (3) persons nominated by the commission is satisfactory to the governor, he may reject all three (3), and require the nominating commission to submit three (3) additional names from which to appoint. If none are satisfactory he may require additional nominees, in groups

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of three (3), until he is able to make his appointment. In any case in which the governor rejects the nominees submitted by the commission, the commission shall resubmit a list of nominees within thirty (30) days of written notice by the governor of such rejection. Within thirty (30) days from the date the full membership of the commission is named initially, the commission shall meet, upon the call of the speaker of the senate, and elect a chairman. Thereafter the commission shall meet at the call of the chairman and shall, within thirty (30) days of the initial meeting, submit its initial list of nominees to the governor. In the case of a vacancy in the office of director arising hereafter during a term, the commission shall meet and submit its list of nominees within sixty (60) days of the date of such vacancy. In such a case the appointment by the governor shall be for the unexpired portion of the director's term. With respect to the appointment of a director to a new term of office, the nominating commission shall be named no later than ninety (90) days before the expiration of the prior term. The commission in such case shall meet initially at the call of the speaker of the senate, elect a chairman and shall then meet and make its submission of nominees no later than thirty (30) days prior to expiration of the term. The first term of office of the director shall begin on March 27, 1980 and shall extend through the thirtieth day of June, 1986. The next term shall begin on the first day of July, 1986, and it, and all successive terms shall be of six (6) full years. The nominating commission as defined under this section shall be subject to the provisions of chapter 44 of title 8.

(4) The director shall be subject to removal from office under the provisions of chapter 47 of title 8, but in the case of suspension of the director under the provisions of § 8-47-116 the office of director shall be filled pending final disposition of the removal proceeding by the official in charge of the criminal investigation division of the bureau.

(5) The official in charge of the criminal investigation division of the bureau shall likewise serve as acting director of the bureau from the occurrence of any vacancy in the office of director until a director is appointed as provided for in this chapter.

(6) In addition to his other duties, the director shall be a member of the Tennessee law enforcement planning commission. [Acts 1951, ch. 173, § 1 (Williams, § 11465.10); 1980 (Adj. S.), ch. 636, §§ 1, 13, 15.]

Compiler's Notes. Section 1 of Acts 1980 (Adj. S.), ch. 636 provides in part: "The present director of the Tennessee bureau of criminal identification shall serve as the director of the Tennessee bureau of investigation until his successor has been appointed as provided in this act."

Amendments. The 1980 amendment substituted the present section for the section appearing in the bound volume.

Effective Dates. Acts 1980 (Adj. S.), ch. 636, § 17. March 27, 1980.

Cross-References. Commissioner of safety, salary, § 8-23-101.

Registration of persons acting as law enforcement officers, § 8-8-221.

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38-502. Criminal investigation division — Assistance to district attorney general — Powers — Investigations — Mitigation of prosecution by director. — The criminal investigation division shall consist of not less than six (6) persons who shall be experienced in the detection of crime and in criminal work generally. The director, with the approval of the governor, however, may increase the number of persons employed in the criminal investigation division, to such number as may be found to be feasible and necessary. At least two (2) of such criminal investigators shall be normally detailed to service in each grand division of the state, but the director shall have power to detail any and all such investigators to service in grand divisions in case of emergency. The director upon the request of the district attorney general of any circuit may assign such criminal investigators to aid such district attorney general in the investigation of any crime committed in his judicial circuit, but only when said district attorney general requests such aid. When detailed by the director to aid the district attorney general as aforesaid, such criminal investigators shall have full power to issue subpoenas for witnesses, serve the same, to administer oaths to such witnesses as they may summon, to take written statements from them and when so detailed shall have the same powers with reference to the execution of criminal process, making arrests, and the like, as does the sheriff of the county in which such investigators are at work.

Investigators of the bureau of investigation are authorized, without a request from the district attorney general, to make investigations in connection with violations of the Tennessee narcotic laws or laws relating to barbital, amphetamine, desoxyephedrine, or compounds or mixtures thereof, including all derivatives of phenolethylamine or any of the salts thereof which have a stimulating effect on the central nervous system, and barbiturates and its derivatives, any matters pertaining to fugitives from justice, and investigations pertaining to the employees or prospective employees of the bureau or the department of safety and all activities concerning organized crime. For the purposes of this code provision, organized crime shall be defined as the unlawful activities of the members of an organized, disciplined association engaged in supplying illegal goods and services, including, but not limited to, gambling, prostitution, loan sharking, narcotics, labor racketeering, and other unlawful activities of members of such organizations. The bureau of investigation also is authorized upon the request of the governor, the attorney general and reporter, any member of the board, the commissioner of correction or a district attorney general to conduct investigations into allegations of fraud, corruption, or dishonesty involving the granting, revoking or denying of paroles, release classification status or executive clemency of any type. The governor, a district attorney general, the attorney general and reporter, or the Tennessee board of paroles acting at the request of the governor, may request the assistance of the bureau of investigation to determine whether any recipient of executive clemency of any type has been or is presently abiding by the terms and conditions imposed upon the governor's granting of executive clemency of any type. However the bureau

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shall coordinate its activities whenever possible with municipal, county, and federal police agencies with emphasis toward providing strike force capabilities to high crime areas within the state. The bureau shall continue to utilize the communications systems of the department of safety.

Whenever a district attorney general may refuse or neglect to present the results of any investigation undertaken hereunder to a grand jury, the director or his designated representative may appear before the grand jury and seek a presentment, and the grand jury shall have the power to issue compulsory process for the appearance of witnesses. In the event the grand jury returns a presentment and the district attorney general refuses to prosecute, the director may petition for the appointment of a district attorney pro tempore as provided for in § 8-7-106. [Acts 1951, ch. 173, § 2 (Williams, § 11465.11); 1957, ch. 134, § 1; 1957, ch. 216, § 1; 1961, ch. 297, § 1; 1970 (Adj. S.), ch. 362, § 1; 1979, ch. 359, § 9; 1980 (Adj. S.), ch. 636, § 2; impl. am. Acts 1980 (Adj. S.), ch. 636, § 13.]

Amendments. The 1979 amendment in the second paragraph added the present third and fourth sentences.

The 1980 amendment, in the first paragraph, in the second, fourth and fifth sentences, substituted "director" for "commissioner"; substituted, throughout the section, "criminal investigation division" for "field division," and "criminal investigators" for "field investigators"; in the second paragraph, in the first sentence, substituted "investigation" for "criminal identification" following "bureau of," and, added "bureau or the" preceding "department of safety"; in the second paragraph, substituted the present last two sentences for the former last sentence which read: "However, when any investigation hereunder is undertaken in a particular locality, the bureau shall notify local enforcement authorities"; and, added the last paragraph of the section.

Effective Dates. Acts 1979, ch. 359, § 41. July 1, 1979.

Acts 1980 (Adj. S.), ch. 636, § 17. March 27, 1980.

Cited: In re Investigation of Polk County Voting Fraud & Election Law Violation, 573 S.W.2d 466 (Tenn. 1978).

NOTES TO DECISIONS

1. Subpoenas.

Where defendant was not a party to a subpoena issued under this section, defendant had no standing to object to its issuance or to such compliance as the subpoenaed party made pursuant to its directives. Sheets v. Hathcock (Cr. App. 1975), 528 S. W. 2d 47.

38-503. Forensic services division — Employees — Duties — Supervision. — The forensic services division shall consist of experts in the scientific detection of crime. The director is hereby empowered to employ either upon a temporary or permanent basis, but is not limited to, ballistics expert, pathologist, toxicologist, expert in the detection of human bloodstains and fingerprint experts and such other persons of expert knowledge in the detection of crime as may be found feasible. It shall be the duty of the forensic services division to keep a complete record of such fingerprints as may be obtained by them through exchange with the federal bureau of investigation, with similar bureaus in other states and from fingerprints obtained in this state. Each peace officer of this state, upon fingerprinting any person arrested, shall furnish a copy of such fingerprints to the forensic services division of the bureau.

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Likewise, such fingerprints as are now on file at the state penitentiary shall be transferred therefrom to the bureau and maintained by it. Each person hereafter received at the state penitentiary shall be fingerprinted and a copy thereof furnished to the bureau. The bureau is hereby authorized to exchange with the federal bureau of investigation any and all information obtained by it in the course of its work and to request of the federal bureau of investigation such information as it may desire.

The services of the forensic services division may be made available by the director to any district attorney general of this state, the chief medical examiner and all county medical examiners in the performance of their duties under the postmortem examination law or to any peace officer upon the approval of the district attorney general of the circuit in which such peace officer is located. The forensic services division likewise is authorized to avail itself of the services of any and all other departments of the state where the same may be of benefit to it, including but not limited to the state chemists and other expert personnel.

The Tennessee crime laboratory and all regional crime laboratories shall be under the supervision of the director of the bureau or his designated representatives. [Acts 1951, ch. 173, § 3 (Williams, § 11465.12); 1980 (Adj. S.), ch. 636, § 3; 1980 (Adj. S.), ch. 810, § 1.]

Amendments. The 1980 amendment by chapter 636 substituted "forensic services" for "laboratory" throughout the section; in the first paragraph, in the second sentence, substituted "The director is" for "The commissioner and director are," and, added "pathologist" following "ballistics expert"; in the second paragraph, in the first sentence, deleted "thereof with approval of the commissioner" following "by the director"; and added the last paragraph of the section.

The 1980 amendment by chapter 810, in the first sentence of the second paragraph, added "the chief medical examiner and all county medical examiners in the performance of their duties under the postmortem examination law" preceding "or to any peace officer."

Effective Dates. Acts 1980 (Adj. S.), ch. 636, § 17. March 27, 1980.

Acts 1980 (Adj. S.), ch. 810, § 5. April 23, 1980.

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CHAPTER 40

DESTRUCTION OF RECORDS UPON DISMISSAL OR ACQUITTAL

SECTION.

40-4001. Destruction of records.
40-4002. Officials required to destroy.

40-4001. Destruction of records. — (a) All public records of a person who has been charged with a misdemeanor or a felony, and which charge has been dismissed, or a no true bill returned by a grand jury, or a verdict of not guilty returned by a jury or a conviction which has by appeal been reversed, shall, upon petition by said person to the court having jurisdiction in such previous action, be removed and destroyed without cost to said person; however, the cost for destruction of records shall apply where said charge or warrant was dismissed in any court as a result of the successful completion of diversion program according to §§ 40-2105 — 40-2108, provided, however, such cost for destruction shall not exceed twenty-five dollars ($25.00).

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(b) Public records, for the purpose of expunction only, shall not include arrest histories, investigative reports, intelligence information of law-enforcement agencies, or files of district attorneys general that are maintained as confidential records for law-enforcement purposes and are not open for inspection by members of the public.

(c)(1) Release of such confidential records or information contained therein other than to law-enforcement agencies for law-enforcement purposes shall be a misdemeanor.

(2) This section shall not be construed to deny access to any record to the comptroller of the treasury or his agent for purposes of audit investigation; the comptroller or his agent having such access shall protect the confidential nature of any such records which are not otherwise public under other statutes.

(3) Release of arrest histories of a defendant or potential witness in a criminal proceeding to an attorney of record in the proceeding shall be made to such attorney upon request. [Acts 1973, ch. 318, § 1; 1975, ch. 193, § 1; 1977, ch. 161, § 1; 1978 (Adj. S.), ch. 736, § 1; 1980 (Adj. S.), ch. 892, § 2.]

Amendments. The 1980 amendment designated the existing section as subsection (a) and added subsections (b) and (c)(1), (c)(2) and (c)(3).

Effective Dates. Acts 1980 (Adj. S.), ch. 892, § 3. May 1, 1980.

Section to Section References. This section is referred to in § 40-4002.

Law Reviews. A Critical Survey of Developments in Tennessee Family Law in 1976-77, VI. Juvenile Courts (Neil P. Cohen), 45 Tenn. L. Rev. 469.

Special project: Criminal Procedure as Defined by the Tennessee Supreme Court (Julian L. Bibb and Walter Sillers Weems), 30 Vand. L. Rev. (4) 691.

Tennessee Civil Disabilities: A Systemic Approach (Neil P. Cohen), 41 Tenn. L. Rev. 253.

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality.
2. Application to other sections.
3. Public records.

1. Constitutionality.

Where, on its own volition, without reference to the attorney general or requiring other argument or action, a circuit court held this section and §§ 40-4002 — 40-4004 unconstitutional, the Supreme Court reversed since the constitutional question had not been properly presented and was not before the court. Skiles v. State (1974), — Tenn. —, 516 S. W. 2d 75.

This section, even though it impliedly amends §§ 18-105, 18-402, does not violate Tenn. Const., Art. 2, § 17 which requires that the caption or body of an act make reference to any laws it repeals or amends as Art. 2, § 17 does not apply to implied amendments. Martin v. State (1975), — Tenn. —, 519 S. W. 2d 793.

The expungement statute, providing that under certain circumstances judicial records shall be destroyed, was not unconstitutional as violating the separation of powers provisions, since control of the use of such records is properly a legislative, not judicial function, and was not unconstitutional by reason of amending or repealing a large part of the code without any recitation in the caption of the act that such was being done. Underwood v. State (Sup. Ct. 1975), 529 S. W. 2d 45.

An interpretation of this statute that it applies to records used for internal use as well as those for public inspection does not make it unconstitutional. State v. John Doe, 588 S.W.2d 549 (Tenn. 1979).

2. Application to Other Sections.

This section has no application to cases where a defendant pleads guilty and receives a reduced sentence, imposed under § 40-2703. Skiles v. State (1974), — Tenn. —, 516 S. W. 2d 75.

3. Public Records.

The term "public records" as used in this section refers to all records maintained by a public official regardless of whether such records be for public inspection or for internal use. State v. John Doe, 588 S.W.2d 549 (Tenn. 1979).

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40-4002. Officials required to destroy. — The chief administrative official of the municipal, county, or state agency and the clerk of the court where such records are recorded shall remove and destroy such records within a period of sixty (60) days from the date of filing a petition authorized by § 40-4001. [Acts 1973, ch. 318, § 2; 1978 (Adj. S.), ch. 641, § 1.]

* * * * *

40-2109. Expunging records. — (a) Upon petition by a defendant in the court which entered a nolle prosequi in his case the court shall order all public records expunged.

(b) Public records, for the purpose of expunction only, shall not include arrest histories, investigative reports, intelligence information of law-enforcement agencies, or files of district attorneys general that are maintained as confidential records for law enforcement purposes and are not open for inspection by members of the public.

(c)(1) Release of such confidential records or information contained therein other than to law-enforcement agencies for law-enforcement purposes shall be a misdemeanor.

(2) This section shall not be construed to deny access to any record to the comptroller of the treasury or his agent for purposes of audit investigation; the comptroller or his agent having such access shall protect the confidential nature of any such records which are not otherwise public under other statutes.

(3) Release of arrest histories of a defendant or potential witness in a criminal proceeding to an attorney of record in the proceeding shall be made to such attorney upon request. [Acts 1976 (Adj. S.), ch. 790, § 1; 1980 (Adj. S.), ch. 892, § 1.]

Amendments. The 1980 amendment designated the existing section as subsection (a) and added subsections (b) and (c)(1), (c)(2) and (c)(3).

Effective Dates. Acts 1980 (Adj. S.), ch. 892, § 3. May 1, 1980.

Law Reviews. The Tennessee Court System — Criminal Court (Frederic S. Le Clercq), 8 Mem. St. U.L. Rev. 319.

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	TCS Art. 4413(21)			X
2. Privacy and Security Council				
3. Dissemination Regulations	Generally: Open Records Act, TRCS Art. 6252-17a exempts crim. records from public avail. (Sect. 3(a)(8)) but Sect. 14(a) says exempt records may be open. TCS Art. 4413(14)			
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies				X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies				
3.12 Authorizes to Private Sector				
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	TCS Art. 4413(14)			X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies				
3.22 Authorizes to Private Sector				
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	TCS Art. 4413(14)			X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies				
3.32 Authorizes to Private Sector				
3.33 Prohibits to Criminal Justice Agencies				
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3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy				
5. Right to Challenge				
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information	Crim. Proc. Art. 55.01			X
8. Purging Conviction Information				

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information	Fam. Code Sect. 51.16			X
11. Removal of Disqualifications				
12. Right to State Non-Existence of Record	Crim. Proc. Art. 55.03 Fam. Code Sect. 51.16(h)			X X
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements				
14.2 Auditing Requirements				
14.3 Other Accuracy/Completeness Requirements				
15. Dedication				
16. Civil Remedies				
17. Criminal Penalties	Crim. Proc. Art. 55.04			X
18. Public Records	TRCS Art. 6252-17a, Sect. 3(a)(8)	X		
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security				
22.1 Physical (Building) Security				
22.2 Administrative Security				
22.3 Computer Security				
23. Transaction Logs				
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)	TRCS Art. 6252-17a, Sect. 3(a)(8)			X
27. FOIA (Excluding CJI)	TRCS Art. 6252-17a, Sect. 3(a)(8)			X
28. Central State Repository	TCS Art. 4413(14)			X

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Texas Code Criminal Procedure

CHAPTER FIFTY-FIVE—EXPUNCTION OF CRIMINAL RECORDS

Acts 1979, 66th Leg., p. 1333, ch. 604, which by § 1 amended this Chapter 55, provided in § 3:

"Any law or portion of a law that conflicts with Chapter 55, Code of Criminal Procedure, 1965, as amended, is repealed to the extent of the conflict."

Article 55.01. Right to expunction

A person who has been arrested for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if each of the following conditions exist:

(1) an indictment or information charging him with commission of a felony has not been presented against him for an offense arising out of the transaction for which he was arrested or, if an indictment or information charging him with commission of a felony was presented, it has been dismissed and the court finds that it was dismissed because the presentment had been made because of mistake, false information, or other similar reason indicating absence of probable cause at the time of the dismissal to believe the person committed the offense or because it was void;

(2) he has been released and the charge, if any, has not resulted in a final conviction and, is no longer pending and there was no court ordered supervision under Article 42.13, Code of Criminal Procedure, 1965, as amended, nor a conditional discharge under Section 4.12 of the Texas Controlled Substances Act (Article 4476—15, Vernon's Texas Civil Statutes); and

(3) he has not been convicted of a felony in the five years preceding the date of the arrest.

Amended by Acts 1979, 66th Leg., p. 1333, ch. 604, § 1, eff. Aug. 27, 1979.

Law Review Commentaries

Annual survey of Texas law: Family law—Parent and child. Ellen K. Solender, 34 Southwestern L.J. (Tex.) 159 (1980).

Expunction of criminal records. Practical procedures for implementing Chapter 55. Mark Cohen, 41 Texas Bar J. 585 (1978).

1. Construction and application

There is no right of appeal given by this chapter under which petition to expunge arrest records was filed, regardless of action of trial court. Ex parte Paprskar (Cr. App.1978) 573 S.W.2d 525.

Appeal from order that defendant's arrest record be expunged by state and city, which contended that expunction statutes relied upon were unconstitutional was dismissed by Court of Criminal Appeals for want of jurisdiction, since attempted appeals from orders entered pursuant to arts 55.01 to 55.05 were not criminal cases and since no statutory right of appeal had been conferred by this chapter. State v. Henson (Cr.App.1978) 573 S.W.2d 548.

Records of investigation of child abuse incident by county child welfare unit under V.T.C.A. Family Code, § 34.05, except for any references in those records which were based on police records and files relating to parent's arrest, were not subject to expunction. S. P. v. Dallas County Child Welfare Unit of Texas Dept. of Human Resources (Civ.App.1979) 577 S.W.2d 385, ref. n. r. e.

Procedure for expunction of arrest record applies to county child welfare units and to the State Department of Human Resources; however, nonaccusatory reports under V. T.C.A. Family Code, § 34.02 are not subject to expunction under this chapter and neither are investigations and written reports authorized by V.T.C.A. Family Code, § 34.-05, except for references in such reports which are based on police records and files relating to the arrest. Id.

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Art. 55.02. Procedure for Expunction

Section 1. (a) A person who is entitled to expunction of records and files under this chapter may file an ex parte petition for expunction in a district court for the county in which he was arrested.

(b) The petitioner shall include in the petition a list of all law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state and of all central federal depositories of criminal records that the petitioner has reason to believe have records or files that are subject to expunction.

Sec. 2. The court shall set a hearing on the matter no sooner than thirty days from the filing of the petition and shall give reasonable notice of the hearing to each official or agency or other entity named in the petition by certified mail, return receipt requested, and such entity may be represented by the attorney responsible for providing such agency with legal representation in other matters.

Sec. 3. (a) If the court finds that the petitioner is entitled to expunction of any records and files that are the subject of the petition, it shall enter an order directing expunction and directing any state agency that sent information concerning the arrest to a central federal depository to request such depository to return all records and files subject to the order of expunction. Any petitioner or agency protesting the expunction may appeal the court's decision in the same manner as in other civil cases. When the order of expunction is final, the clerk of the court shall send a certified copy of the order by certified mail, return receipt requested, to each official or agency or other entity of this state or of any political subdivision of this state named in the petition that there is reason to believe has any records or files that are subject to the order. The clerk shall also send a certified copy by certified mail, return receipt requested, of the order to any central federal depository of criminal records that there is reason to believe has any of the records, together with an explanation of the effect of the order and a request that the records in possession of the depository, including any information with respect to the proceeding under this article, be destroyed or returned to the court.

(b) All returned receipts received by the clerk from notices of the hearing and copies of the order shall be maintained in the file on the proceedings under this chapter.

Sec. 4. (a) If the state establishes that the petitioner is still subject to conviction for an offense arising out of the transaction for which he was arrested because the statute of limitations has not run and there is reasonable cause to believe that the state may proceed against him for the offense, the court may provide in its order that the law enforcement agency and the prosecuting attorney responsible for investigating the offense may retain any records and files that are necessary to the investigation.

(b) Unless the petitioner is again arrested for or charged with an offense arising out of the transaction for which he was arrested, the provisions of Articles 55.03 and 55.04 of this code apply to files and records retained under this section.

Sec. 5. (a) On receipt of the order, each official or agency or other entity named in the order shall:

(1) return all records and files that are subject to the expunction order to the court or, if removal is impracticable, obliterate all portions of the record or file that identify the petitioner and notify the court of its action; and

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(2) delete from its public records all index references to the records and files that are subject to the expunction order.

(b) The court may give the petitioner all records and files returned to it pursuant to its order.

(c) If an order of expunction is issued under this article, the court records concerning expunction proceedings are not open for inspection by anyone except the petitioner unless the order permits retention of a record under Section 4 of this article and the petitioner is again arrested for or charged with an offense arising out of the transaction for which he was arrested. The clerk of the court issuing the order shall obliterate all public references to the proceeding and maintain the files or other records in an area not open to inspection.

Amended by Acts 1979, 66th Leg., p. 1333, ch. 604, § 1, eff. Aug. 27, 1979.

Index to Notes

In general 1
Review 2

1. In general

Inasmuch as allegation raised by petition for expunction of arrests patently revealed that petitioner was neither confined nor restrained pursuant to any state action which was made the subject of his petition and inasmuch as disposition of claim would not affect fact or duration of his confinement, action seeking review of order dismissing petition could not be construed as petition for writ of habeas corpus which would invoke jurisdiction of the Court of Criminal Appeals under arts. 11.22 and 11.23. Ex parte Paprskar (Cr.App.1978) 573 S.W.2d 525.

In purported appeal from order dismissing a petition to expunge arrest records, court would take judicial notice that petitioner was presently confined in the Texas Department of Corrections pursuant to conviction for murder. Id.

Order of trial court dismissing petition to expunge arrest records did not place petitioner in jeopardy in matter from which he could appeal. Id.

There is no right of appeal given by this chapter under which petition to expunge arrest records was filed, regardless of action of trial court. Id.

There is no constitutional or statutory authority which would confer jurisdiction on the Court of Criminal Appeals to entertain a direct appeal from order entered pursuant to motion for expunction of arrests and, thus, court had no power to entertain the cause. Id.

Fact that statutory basis of action seeking expungement of arrest records is contained in the Code of Criminal Procedure would not render case a criminal case so as to confer jurisdiction over case on the Court of Criminal Appeals. Id.

Appeal from order that defendant's arrest record be expunged by state and city, which contended that expunction statutes relied upon were unconstitutional, was dismissed by Court of Criminal Appeals for want of jurisdiction, since attempted appeals from orders entered pursuant to arts. 55.01 to 55.05 were not criminal cases and since no statutory right of appeal had been conferred by this chapter. State v. Henson (Cr.App.1978) 573 S.W.2d 548.

2. Review

Court of Civil Appeals has jurisdiction under Const. Art. 5, § 6, and Vernon's Ann.Civ.St. art. 2249 to entertain an appeal from a criminal district court order with respect to expunction of arrest records. S. P. v. Dallas County Child Welfare Unit of Texas Dept. of Human Resources (Civ. App.1979) 577 S.W.2d 385, ref. n. r. e.

Art. 55.03. Effect of Expunction

After entry of an expunction order:

(1) the release, dissemination, or use of the expunged records and files for any purpose is prohibited;

(2) except as provided in Subdivision 3 of this article, the petitioner may deny the occurrence of the arrest and the existence of the expunction order; and

(3) the petitioner or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

Amended by Acts 1979, 66th Leg., p. 1333, ch. 604, § 1, eff. Aug. 27, 1979.

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Art. 55.04. Violation of Expunction Order

Section 1. A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state or any political subdivision of the state and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

Sec. 2. A person who knowingly fails to return or to obliterate identifying portions of a record or file ordered expunged under this chapter commits an offense.

Sec. 3. An offense under this article is a Class B misdemeanor.

Amended by Acts 1979, 66th Leg., p. 1333, ch. 604, § 1, eff. Aug. 27, 1979.

Art. 55.05. Notice of Right to Expunction

On release or discharge of an arrested person, the person responsible for the release or discharge shall give him a written explanation of his rights under this chapter and a copy of the provisions of this chapter.

Amended by Acts 1979, 66th Leg., p. 1333, ch. 604, § 1, eff. Aug. 27, 1979.

Texas Family Code Annotated

§ 51.16. Sealing of Files and Records

(a) On the application of a person who has been found to have engaged in delinquent conduct or conduct indicating a need for supervision, or a person taken into custody to determine whether he engaged in delinquent conduct or conduct indicating a need for supervision, or on the juvenile court's own motion, the court, after hearing, shall order the sealing of the files and records in the case, including those specified in Sections 51.14 and 51.15 of this code, if the court finds that:

(1) two years have elapsed since final discharge of the person, or since the last official action in his case if there was no adjudication;

(2) since the time specified in Subdivision (1) of this subsection, he has not been convicted of a felony or a misdemeanor involving moral turpitude or found to have engaged in delinquent conduct or conduct indicating a need for supervision, and no proceeding is pending seeking conviction or adjudication; and

(3) it is unlikely the person will engage in further delinquent conduct or conduct indicating a need for supervision or will commit a felony or a misdemeanor involving moral turpitude.

(b) The court may grant the relief authorized in Subsection (a) of this section at any time after final discharge of the person or after the last official action in his case if there was no adjudication.

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(c) Reasonable notice of the hearing shall be given to:

(1) the person who made the application or who is the subject of the files or records named in the motion;

(2) the prosecuting attorney for the juvenile court;

(3) the authority granting the discharge if the final discharge was from an institution or from parole;

(4) the public or private agency or institution having custody of files or records named in the application or motion; and

(5) the law-enforcement agency having custody of files or records named in the application or motion.

(d) Copies of the sealing order shall be sent to each agency or official therein named.

(e) On entry of the order:

(1) all law-enforcement, prosecuting attorney, clerk of court, and juvenile court files and records ordered sealed shall be sent to the court issuing the order;

(2) all files and records of a public or private agency or institution ordered sealed shall be sent to the court issuing the order;

(3) all index references to the files and records ordered sealed shall be deleted;

(4) the juvenile court, clerk of court, prosecuting attorney, public or private agency or institution, and law-enforcement officers and agencies shall properly reply that no record exists with respect to such person upon inquiry in any matter; and

(5) the adjudication shall be vacated and the proceeding dismissed and treated for all purposes, including the purpose of showing a prior finding of delinquency, as if it had never occurred.

(f) Inspection of the sealed files and records may be permitted thereafter by an order of the juvenile court on the petition of the person who is the subject of the files or records and only by those persons named in the order.

(g) On the final discharge of a child or on the last official action in his case if there is no adjudication, the child shall be given a written explanation of his rights under this section and a copy of the provisions of this section.

Historical Note

Comparative Laws:

Uniform Juvenile Court Act (U.L.A.) § 37

Library References

Records ⇔14 C.J.S. Records § 35 et seq.

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§ 51.16. Sealing of Files and Records

[See main volume for text of (a) to (g)]

(h) A person whose files and records have been sealed under this Act is not required in any proceeding or in any application for employment, information, or licensing to state that he has been the subject of a proceeding under this Act; and any statement that he has never been found to be a delinquent child shall never be held against the person in any criminal or civil proceeding.

(i) On the motion of a person in whose name files and records are kept or on the court's own motion, the court may order the destruction of all files and records concerning a person who has been adjudicated to be a child in need of supervision or a delinquent child if:

(1) seven years have elapsed since the child's 16th birthday; and

(2) the person has not been convicted of a felony.

Amended by Acts 1975, 64th Leg., p. 2156, ch. 693, § 13, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 708, ch. 307, § 1, eff. Aug. 27, 1979.

Texas Revised Civil Statutes

Art. 4413(14). The Bureau of Identification and Records

(1) It shall be the duty of the Director to appoint, with the advice and consent of the Commission, a Chief of the Bureau of Identification and Records, who shall be the executive officer. The Chief of the Bureau and at least one assistant shall be recognized identification experts, and with at least three years' actual experience. This Bureau shall procure and file for record, photographs, pictures, descriptions, fingerprints, measurements and such other information as may be pertinent, of all persons who have been or may hereafter be convicted of a felony within the State, and also of all well known and habitual criminals wheresoever the same may be procured. The Bureau shall collect information concerning the number and nature of offenses known to have been committed in this State, of the legal steps taken in connection therewith, and such other information as may be useful in the study of crime and the administration of justice. It shall be the duty of the Bureau to co-operate with the bureaus in other states, and with the Department of Justice in Washington, D. C. It shall be the duty of the Chief of the Bureau to offer assistance, and, when practicable, instruction, to sheriffs, chiefs of police, and other peace officers in establishing efficient local bureaus of identification in their districts.

(2) The Bureau shall make ballistic tests of bullets and firearms, and chemical analyses of bloodstains, cloth, materials and other substances, for the officers of the State charged with law enforcement.

Acts 1935, 44th Leg., p. 444, ch. 181, § 14.

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Cross References

Polygraph Examiners Act, see art. 4413(29cc).

Library References

States ⇐45. C.J.S. States §§ 52, 66.

Notes of Decisions

1. Fingerprints

See, also, Notes of Decisions under Vernon's Ann.C.C.P. art. 38.01.

"Fingerprints" are a means of identification, and proof that one has an established fingerprint record is not proof that he is a criminal or that he has previously been convicted of crime. Bundren v. State (1948) 211 S.W.2d 197, 152 Cr.R. 45.

Since any services performed by a deputy sheriff as a fingerprint expert are performed in his official capacity and within scope of his official duties, such deputy would not be entitled to any additional compensation therefor. Op.Atty.Gen.1943, No. O-5586.

Law enforcement officers may use such force as is reasonably necessary in the exaction of fingerprints from a person legally arrested. Op.Atty.Gen.1957, No. WW-169.

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	77-26-6			X
2. Privacy and Security Council				
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	77-26-16			X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	77-26-16			X
3.12 Authorizes to Private Sector	77-26-16 77-18-2			X X
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	77-26-16			X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	77-26-16			X
3.22 Authorizes to Private Sector	77-26-16 77-18-2			X X
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	77-26-16			X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	77-26-16			X
3.32 Authorizes to Private Sector	77-26-16 17-18-2			X X
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only	77-26-16(7) 63-2-85.4(5)			X X
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy				
5. Right to Challenge	77-26-16(7) 63-2-85.4(6)			X X
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information	77-26-16(4) 77-18-2			X X
8. Purging Conviction Information	77-18-2			X

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information	77-18-2			X
11. Removal of Disqualifications				
12. Right to State Non-Existence of Record	77-18-2			X
13. Research Access	77-26-16(2)(e)			X
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	77-26-5,8,9,10,11			X
14.2 Auditing Requirements				
14.3 Other Accuracy/Completeness Requirements				
15. Dedication				
16. Civil Remedies	63-2-88			X
17. Criminal Penalties	77-26-19,20			X
18. Public Records	78-26-2	X		
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination	77-26-13			X
22. Security				
22.1 Physical (Building) Security				
22.2 Administrative Security	77-26-16(5),(6)			X
22.3 Computer Security	77-26-16(5), (6)			X
23. Transaction Logs				
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)				
27. FOIA (Excluding CJI)	63-2-89			X
28. Central State Repository	77-26-3			X

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Utah Code Annotated

63-2-59. Archives and records service and information practices—Short title of act.—This act shall be known and may be cited as the "Archives and Records Service and Information Practices Act."

History: L. 1969, ch. 212, § 1; 1979, ch. 223, § 1.

Compiler's Notes.

The 1979 amendment substituted "Archives and Records Service and Information Practices Act" for "Archives and Records Service Act."

63-2-60. Archives and records service—Purpose of act.—It is the intent of the legislature to create a central archives and records service within the department of finance to administer the archives and records-management programs of the state and apply efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposal of state records and documents.

It is also the intent of this act to establish fair information practices to ensure that the rights of persons are protected and that proper remedies are established to prevent abuse of personal information.

History: L. 1969, ch. 212, § 2; 1979, ch. 223, § 2.

Compiler's Notes.

The 1979 amendment added the second paragraph.

63-2-61. Archives and records service—Definitions.—As used in this act:

(1) "Public records" mean all written or printed books, papers, letters, documents, maps, plans, photographs, sound recordings, and other records made or received in pursuance of state law or in connection with the transaction of public business by the public offices, agencies, and institutions of the state and its counties, municipalities, and other subdivisions of government.

(2) "State agency" or "state agencies" mean any department, division, board, bureau, commission, council, institution, authority, or other unit, however designated, of the state.

(3) "Public offices" and "public officers" mean, respectively, the offices and officers of any court, department, division, board, commission, bureau, council, authority, institution or other agency of the state of Utah or any of its political subdivisions.

(4) "Public archives" mean the body of public records accumulated and preserved in an official custody for record purposes by any agency or its legal successor.

(5) "Archivist" means the state archivist and records administrator.

(6) "Print" includes all forms of duplicating other than by use of carbon paper.

(7) "State publication" or "publication" mean any document, compilation, journal, law, resolution, blue-book, statute, code, register, pamphlet, book, report, hearing, legislative bill, leaflet, order, regulation, directory, periodical, or magazine issued in print by the state, any officer of the state, the legislature, or any state agency.

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(8) "Records committee" mean the state records committee.

(9) "Data on individuals" includes all records, files and processes which contain any data on any individual and which are kept or intended to be kept by state government on a permanent or semi-permanent basis, including, but not limited to, that data by which it is possible to identify with reasonable certainty the person to whom such information pertains.

(10) "Responsible authority" means any state office or state official established by law or executive order as the body responsible for the collection or use of any set of data on individuals or summary data.

(11) "Summary data" means statistical records and reports derived from data on individuals but in which individuals are not identified and from which neither their identities nor any other characteristic that could uniquely identify an individual is ascertainable.

(12) "Public data" means data on individuals collected and maintained by state government which, in the opinion of the state records committee, should be open to the public.

(13) "Confidential data" means data on individuals collected and maintained by state government which, in the opinion of the state records committee, should be available only to appropriate agencies for the use specified in subsection 63-2-85.3(2) and to others by express consent of the individual, but not to the individual himself.

(14) "Private data" means data on individuals collected and maintained by state government which, in the opinion of the state records committee, should be available only to the appropriate agencies for the uses specified in subsection 63-2-85.3(2), to others by the express consent of the individual, and to the individual himself or next of kin when information is needed to acquire benefits due a deceased person.

History: L. 1969, ch. 212, § 3; 1979, ch. 223, § 3.

Compiler's Notes.

The 1979 amendment added subd. (9) to (14); and made minor changes in phraseology.

63-2-85.1. Archives and records service—Identification of authorities collecting or using data.—The archivist is directed to identify responsible authorities in state government involved in the collection or use of data on individuals or summary data.

History: C. 1953, 63-2-85.1, enacted by L. 1979, ch. 223, § 4.

Title of Act.

An act amending sections 63-2-59, 63-2-60, 63-2-61 and 63-2-87, Utah Code Annotated 1953, as enacted by chapter 212, Laws of Utah 1969, enacting sections 63-2-85.1, 63-2-85.2, 63-2-85.3, 63-2-85.4, 63-2-88 and 63-2-89, Utah Code Annotated 1953, and repealing sections 63-50-1 through 63-50-10, Utah Code Annotated 1953, as enacted by chapter 194, Laws of Utah 1975; placing the responsibilities for information practices and procedures under the Archives and Records Service Act; repealing the Utah Information Practices Act; and providing an effective date.—Laws 1979, ch. 223.

63-2-85.2. Archives and records service—Report on information practices—Contents.—(1) On or before December 1 of each year, the archivist shall prepare a report or a revision of the previous year's report, on information practices for presentation to the legislature and to the governor. Summaries of the report shall be available to the public at a nominal cost. The report shall contain to the extent feasible, information including, but not limited to:

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(a) A complete listing of all systems of confidential and private data on individuals which are kept by the state, a description of the kinds of information contained therein, and the reason that the data is kept;

(b) The title, name and address of the responsible authority for each system of confidential or private data on individuals;

(c) The policies and practices of the responsible authority and the secretary regarding data storage, duration of retention of data and disposal thereof;

(d) A description of the provisions for maintaining the integrity of the data pursuant to subsection 63-2-85.3(4);

(e) The procedures, pursuant to section 63-2-85.4, whereby an individual can:

(i) Be informed if he is the subject of any data on individuals in the system;

(ii) Gain access to that data; and

(iii) Contest the accuracy, completeness and pertinence of that data and necessity for retaining it; and

(f) Any recommendations concerning appropriate legislation.

(2) Each responsible authority shall furnish the archivist with the data set forth in subsection (1) at a time set by the archivist to enable preparation of that annual report.

History: C. 1953, 63-2-85.2, enacted by L. 1979, ch. 223, § 5.

63-2-85.3. Archives and records service—Rules and regulations.—The archivist shall promulgate rules and regulations in accordance with sections 63-46-5 and 63-46-8. These rules and regulations shall apply to state systems of data on individuals or summary data and shall provide for the implementation of the enforcement and administration of the following standards:

(1) Collection of data on individuals and establishment of related files of the data in state government shall be limited to that necessary for the administration and management of programs enacted by the legislature or by executive order.

(2) Data on individuals shall be under the jurisdiction of the responsible authority identified and designated by the archivist. The responsible authority shall document and file with the archivist the nature of all data on individuals collected and stored and the need for, and intended use of, the data and any other information required.

(3) The use of summary data under the jurisdiction of one or more responsible authorities shall be permitted, subject to the requirement that the data be summarized under the direction of, and by, that responsible authority. Requests for use of any data shall be in writing, stating the intended use.

(4) Appropriate safeguards shall be established in relation to the collection, storage, dissemination and use of data on individuals to assure that all data is accurate, complete and current. Emphasis shall be placed on the data security requirements of computerized files which are accessible directly by means of telecommunication, including security during transmission.

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(5) Data on individuals shall be stored only so long as necessary to the administration of authorized programs as authorized by statute or by the state records committee.

History: C. 1953, 63-2-85.3, enacted by L. 1979, ch. 223, § 6.

63-2-85.4. Archives and records service—Rights of individuals on whom data stored—Data in dispute, procedure.—The rights of individuals on whom data is stored or is to be stored and the responsibilities of each responsible authority in regard to that data shall be as follows:

(1) The purposes for which the data on individuals is collected and used, or is to be collected and used, shall be filed in writing by the responsible authority with the archivist and shall be a matter of public record.

(2) An individual requested to supply confidential or private data shall be informed of the intended uses of that data.

(3) Any individual refusing to supply confidential or private data shall be informed by the requesting party of any known consequence arising from that refusal.

(4) No confidential or private data shall be used other than for the stated purposes nor shall it be disclosed to any person other than the individual to whom the data pertains, without express consent of that individual, except that next of kin may obtain information needed to acquire benefits due a deceased person.

(5) Upon request to the archivist, an individual shall be informed whether he is the subject of any data on individuals, informed of the content and meaning of that data, and shown the data without any charge. The archivist shall charge an appropriate fee for any additional requests within a six-month period unless the requested information is in dispute.

(6) An individual shall have the right to contest the accuracy or completeness of any data on individuals about him. If that data is contested, the individual shall notify, in writing, the responsible authority of the nature of the disagreement. Within 30 days from that notice, the responsible authority shall either correct the data if it is found to be inaccurate or incomplete and notify past recipients of the inaccurate or incomplete data of the change, or shall notify the individual of his disagreement with the statement of contest. Any person aggrieved by the determination of that responsible authority may appeal that determination to the archivist and, if still dissatisfied, may bring appropriate action pursuant to section 63-46-9. Data in dispute shall not be disclosed except under conditions required by law or regulation and even then, only if the individual's statement of disagreement is included with the disclosed data.

History: C. 1953, 63-2-85.4, enacted by L. 1979, ch. 223, § 7.

63-2-87. Archives and records service—Violation of act a misdemeanor.—(1) Any person who violates any provision of this act shall be guilty of a class B misdemeanor.

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(2) Any public employee who willfully violates any provision of this act or the rules and regulations promulgated pursuant thereto shall be subject to suspension without pay or discharge, after a hearing as provided by law.

History: L. 1969, ch. 212, § 29; 1979, ch. 223, § 8.

Compiler's Notes.

The 1979 amendment designated the former section as subsec. (1); inserted "class B" in subsec. (1); and added subsec. (2).

63-2-88. Archives and records service—Violation of act—Liability for damages—Injunction.—(1) Any responsible authority who violates any provision of this act shall be liable to any person, suffering damage as a result thereof, and the person damaged may bring an action against the state to recover any damages sustained, plus costs incurred and reasonable attorney fees.

(2) Any responsible authority who willfully violates any provision of this act shall, in addition to those remedies provided under subsection (1), be liable for exemplary damages of not less than $100 nor more than $1,000 for each violation.

(3) Any responsible authority which violates or proposes to violate the provisions of this act may be enjoined by any district court in this state. The court may make any order or judgment as may be necessary to prevent the use or employment by any person of such violations of this act.

History: C. 1953, 63-2-88, enacted by L. 1979, ch. 223, § 9.

63-2-89. Archives and records service—Exemptions from act.—No provisions of this act shall be deemed to apply to data on individuals relating to criminal investigations, nor shall they be construed to restrict or modify the rights heretofore existing of access to public records, or records more than 75 years old.

History: C. 1953, 63-2-89, enacted by L. 1979, ch. 223, § 10.

Repealing Clause.

Section 11 of Laws 1979, ch. 223 provided: "Sections 63-50-1 through 63-50-10, Utah Code Annotated 1953, as enacted by Chapter 194, Laws of Utah 1975, are repealed."

Effective Date.

Section 12 of Laws 1979, ch. 223 provided: "This act shall take effect July 1, 1979."

63-2-90. Risk manager—State property and casualty insurance—Appointment—Duties and responsibilities.—The director of finance shall appoint a risk manager who shall be qualified by education and experience in the management of general property and casualty insurance. The risk manager shall have the duty and responsibility to:

(1) Acquire and administer all property and casualty insurance purchased by the state;

(2) Recommend to the director of finance rules and regulations related to risk management in the state;

(3) Implement a risk management and loss prevention program for state agencies for the purpose of reducing risks, accidents and losses, which shall include but not be limited to examination of records, on site inspections and educational programs;

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(4) Coordinate and cooperate with any state agency having responsibility to manage and protect state properties, including but not limited to the state fire marshal, building board, department of public safety and institutions of higher education;

(5) Maintain records necessary to fulfill the requirements of this section; and

(6) Present an annual report to the director of finance describing the execution of risk management responsibilities in the state.

History: C. 1953, 63-2-88, enacted by L. 1979, ch. 219, § 8.

Compiler's Notes.

Section 8 of Laws 1979, ch. 219 designated this section as 63-2-88; that number was assigned to another law and, therefore, the compiler redesignated the section as 63-2-90.

Cross-References.

State Properties Insurance Reserve Fund, administration, 63-9-26.

63-2-91. Powers of risk manager.—The risk manager may:

(1) Enter into contracts;

(2) Purchase insurance according to state law;

(3) After notice of public hearing, prescribe by regulation reasonable and objective underwriting and safety standards for state agencies and adopt such other regulations as may be deemed necessary;

(4) Adjust, settle, and pay claims;

(5) Pay expenses and costs;

(6) Prescribe by rule or regulation the risks to be covered by the public liability fund and the property insurance reserve fund, and the extent these risks are to be covered;

(7) Study the risks of all state agencies and properties; and

(8) Issue certificates of coverage to state agencies for any risks covered by reserve funds.

History: C. 1953, 63-2-89, enacted by L. 1979, ch. 219, § 9.

Compiler's Notes.

Section 9 of Laws 1979, ch. 219, designated this section as 63-2-89; that number was assigned to another law and, therefore, the compiler redesignated the section as 63-2-91.

* * * * *

77-18-2. Expungement and sealing of court and arrest records.—(1)(a) Any person who has been convicted of any crime within this state may petition the convicting court for a judicial pardon and for sealing of his record in that court. At the time the petition is filed and served upon the prosecuting attorney, the court shall set a date for a hearing and notify the prosecuting attorney for the jurisdiction of the date set for hearing. Any person who may have relevant information about the petitioner may testify at the hearing and the court, in its discretion, may request a written evaluation of the adult parole and probation section of the state division of corrections.

(b) If the court finds the petitioner for a period of five years in the case of a class A misdemeanor or felony, or for a period of three years in the case of other misdemeanors or infractions, after his release from incarceration, parole or probation whichever occurs last, has not been convicted of a felony or of a misdemeanor involving moral turpitude and that no proceeding involv-

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ing such a crime is pending or being instituted against the petitioner and further finds that the rehabilitation of petitioner has been attained to the satisfaction of the court, it shall enter an order that all records in petitioner's case in the custody of that court or in the custody of any other court, agency or official be sealed. The provisions of this subsection shall not apply to violations for the operation of motor vehicle under title 41. The court shall also issue to the petitioner a certificate stating the court's finding that he has satisfied the court of his rehabilitation.

(2)(a) In any case in which a person has been arrested with or without a warrant, that individual after 12 months, provided there have been no intervening arrests, may petition the court in which the proceeding occurred, or, if there were no court proceedings, any court in the jurisdiction where the arrest occurred, for an order expunging any and all records of arrest and detention which may have been made, if any of the following occurred:

(i) He was released without the filing of formal charges;

(ii) Proceedings against him were dismissed, he was discharged without a conviction and no charges were refiled against him within 30 days thereafter, or he was acquitted at trial; or

(iii) The record of any proceedings against him has been sealed pursuant to subsection (1).

(b) If the court finds that the petitioner is eligible for relief under this subsection, it shall issue its order granting the relief prayed for and further directing the law enforcement agency making the initial arrest to retrieve any record of that arrest which may have been forwarded to the Federal Bureau of Investigation and the Utah Bureau of Criminal Identification.

(c) This subsection shall apply to all arrests and any proceedings which occurred before, as well as those which may occur after, the effective date of this act.

(3) Employers may inquire concerning arrests or convictions only to the extent that the arrests have not been expunged or the record of convictions sealed under this provision. In the event an employer asks concerning arrests which have been expunged or convictions the records of which have been sealed, the person who has received expungement of arrest or judicial pardon may answer as though the arrest or conviction had not occurred.

(4) Inspection of the sealed records shall be permitted by the court only upon petition by the person who is the subject of those records and only to the persons named in the petition.

* * * * *

CHAPTER 26

CRIMINAL IDENTIFICATION

Section

77-26-1. Duties of board and director transferred to commissioner.
77-26-2. Control by commissioner—Compensation—Employment of personnel.
77-26-3. General duties and functions of bureau.
77-26-4. Identification systems.
77-26-5. Collection of information.
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77-26-8. Peace officers and magistrates to supply information.

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77-26-9. Magistrates and court clerks to supply information.
77-26-10. Penal institutions and state hospital to supply information.
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77-26-13. Assistance to law enforcement agencies—Investigation of crimes—Laboratory facilities.
77-26-14. Cooperation with agencies of any state or nation.
77-26-15. Admissibility in evidence of certified copies of bureau files.
77-26-16. Definitions—Restrictions on access, use and contents of bureau records—Challenging accuracy of records.
77-26-17. Communication systems.
77-26-18. Authority of officers and officials to take fingerprints, photographs and other data.
77-26-19. Refusal to provide information—False information—Misdemeanor.
77-26-20. Unauthorized removal, destruction, alteration or disclosure of records—Misdemeanor.

77-26-1. Duties of board and director transferred to commissioner.—Whenever any existing or continuing law names or refers to the board of managers, or the director of the bureau of criminal identification, it means the commissioner of public safety.

History: C. 1953, 77-26-1, enacted by L. 1980, ch. 15, § 2.

77-26-2. Control by commissioner—Compensation—Employment of personnel.—The state bureau of criminal identification shall be under the supervision and control of the commissioner of public safety. The commissioner shall receive no extra compensation or salary as head of the bureau but shall be reimbursed for expenses actually and necessarily incurred in the performance of his duties as supervisor of the bureau. The commissioner shall employ such personnel as may be required to properly discharge the duties of the bureau.

History: C. 1953, 77-26-2, enacted by L. 1980, ch. 15, § 2.

77-26-3. General duties and functions of bureau.—The bureau shall procure and file information relating to identification and activities of persons who are fugitives from justice, wanted or missing, or who have been arrested for or convicted of a crime under the laws of any state or nation and of persons believed to be involved in racketeering, organized crime or dangerous offenses. The bureau shall make a complete and systematic record and index of the same.

History: C. 1953, 77-26-3, enacted by L. 1980, ch. 15, § 2.

77-26-4. Identification systems.—The commissioner shall adopt systems of identification, including the fingerprint system, to be used by the bureau to facilitate the enforcement of the law.

History: C. 1953, 77-26-4, enacted by L. 1980, ch. 15, § 2.

77-26-5. Collection of information.—The commissioner and persons designated by him are authorized to call upon all law enforcement officers, the warden of the state prison, the keeper of any jail or correctional institution or superintendent of the state hospital to obtain information which will aid in establishing the records required to be kept, and all such officers shall furnish the information.

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History: C. 1953, 77-26-5, enacted by L. 1980, ch. 15, § 2.

77-26-6. Regulations governing administration of bureau.—The commissioner shall have authority to promulgate regulations for the administration of the bureau.

History: C. 1953, 77-26-6, enacted by L. 1980, ch. 15, § 2.

77-26-7. Peace officer status of commissioner and bureau employees.—The commissioner and such employees as he designates shall be peace officers.

History: C. 1953, 77-26-7, enacted by L. 1980, ch. 15, § 2.

77-26-8. Peace officers and magistrates to supply information.—It is the duty of every peace officer to cause fingerprints of persons he has arrested to be taken on forms provided by the bureau; to supply information requested on the form; and to forward without undue delay one copy to the bureau and one copy to the Identification Division, Federal Bureau of Investigation. To insure that accurate and complete criminal history records are maintained, it is the duty of every magistrate in whose court persons either plead guilty or are otherwise convicted of a criminal offense for which these persons were not arrested, thereby not having been fingerprinted in connection with the criminal offense to which they plead guilty or are convicted, to cause fingerprints of these persons to be taken on forms provided by the bureau, to supply information requested on these forms, and to forward without undue delay one copy to the bureau and one copy to the Identification Division, Federal Bureau of Investigation.

History: C. 1953, 77-26-8, enacted by L. 1980, ch. 15, § 2.

77-26-9. Magistrates and court clerks to supply information.—Every magistrate or clerk of a court responsible for court records in this state shall furnish the bureau with information pertaining to all dispositions of criminal matters including guilty pleas, convictions, acquittals, probations granted, or any other dispositions within 30 days of the disposition on forms provided by the bureau.

History: C. 1953, 77-26-9, enacted by L. 1980, ch. 15, § 2.

77-26-10. Penal institutions and state hospital to supply information.—The warden of the state prison, keeper of any jail or correctional institution, and superintendent of the state hospital shall forward to the bureau the fingerprints and recent photographs of all persons confined in such institutions under criminal commitment and also information relating to the parole, termination or expiration of sentence, or any other release of such

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persons from confinement during the preceding month and photograph taken near the time of release on forms provided by the bureau.

History: C. 1953, 77-26-10, enacted by L. 1980, ch. 15, § 2.

77-26-11. Adult probation and parole section to supply information.—The adult probation and parole section of the state division of corrections shall furnish to the bureau information relating to the revocation or termination of probation or parole and shall upon request furnish the names, fingerprints, photographs, and other data on forms provided by the bureau.

History: C. 1953, 77-26-11, enacted by L. 1980, ch. 15, § 2.

77-26-12. Supplies and equipment for compliance by reporting agencies.—All governing boards or commissions of each city, town, county, or correctional institution of the state shall furnish the appropriate officials with supplies and equipment necessary to perform the prescribed duties.

History: C. 1953, 77-26-12, enacted by L. 1980, ch. 15, § 2.

77-26-13. Assistance to law enforcement agencies—Investigation of crimes—Laboratory facilities.—The commissioner may assist any law enforcement agency in establishing identification and investigation records systems, in investigating any crime, in coordinating the exchange of criminal identification, intelligence, and investigation information among law enforcement agencies and in providing such agencies with equipment, technical assistance and instruction. Without a request from a law enforcement agency, the commissioner shall, at the direction of the governor, assign bureau employees, for such time as the governor may deem necessary, to investigate any crime within this state for the purpose of identifying, apprehending, and convicting the perpetrator or perpetrators thereof. To the end that he may furnish assistance and aid to any law enforcement agency as specified, the commissioner may provide, through the bureau, crime detection laboratory facilities.

History: C. 1953, 77-26-13, enacted by L. 1980, ch. 15, § 2.

77-26-14. Cooperation with agencies of any state or nation.—The bureau shall cooperate with appropriate agencies of any state or nation in developing uniform systems of criminal identification and exchanging information.

History: C. 1953, 77-26-14, enacted by L. 1980, ch. 15, § 2.

77-26-15. Admissibility in evidence of certified copies of bureau files.—A copy of any fingerprint, record, document or other evidence in the

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files of the bureau, certified by the commissioner to be a true copy of the original, shall be admissible in evidence in the same manner as the original.

History: C. 1953, 77-26-15, enacted by L. 1980, ch. 15, § 2.

77-26-16. Definitions—Restrictions on access, use and contents of bureau records—Challenging accuracy of records.—(1) As used in this chapter:

(a) "Administration of criminal justice" means performance of any of the following activities: detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders;

(b) "Criminal history record information" means information on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release;

(c) "Criminal justice agency" means (i) courts, (ii) a government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute, executive order, or local ordinance, and which allocates greater than 50% of its annual budget to the administration of criminal justice; and

(d) "Executive order" means an order of the President of the United States or the chief executive of a state which has the force of law, and which is published in a manner permitting regular public access thereto.

(2) Dissemination of criminal history record information from bureau files shall be limited as follows:

(a) To criminal justice agencies for purposes of administration of criminal justice and for employment screening by criminal justice agencies;

(b) To non-criminal justice agencies or individuals for any purpose authorized by statute, executive order, court rule, court order, or local ordinance;

(c) To agencies or individuals for the purpose of obtaining required clearances connected with foreign travel or obtaining citizenship;

(d) To agencies or individuals pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice. The agreement shall specifically authorize access to data, limit the use of the data to purposes for which given, and insure the security and confidentiality of the data;

(e) To agencies and individuals as authorized by the commissioner for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, preserve the anonymity of individuals to whom the information relates, and insure the confidentiality and security of the data; and

(f) Such other agencies and individuals as the commissioner shall authorize as he deems necessary to the protection of life and property and in offender identification, apprehension, and prosecution.

(3) Any criminal history record information obtained from bureau files shall be used only for the purposes for which it was provided and shall not be further disseminated.

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(4) Criminal history record information contained in the bureau's computerized criminal history files shall not include arrest or disposition data concerning individuals who have been acquitted, and charges dismissed, or when no complaint against them has been filed, if they have had no prior criminal convictions.

(5) Nothing in this section shall preclude the use of the state information center central computing facilities for the storage and retrieval of criminal history record information. This information shall be stored in such a manner that it cannot be modified, destroyed, or accessed by unauthorized agencies or individuals.

(6) Direct access through remote computer terminals to criminal history record information in the bureau's files shall be limited to those agencies authorized by the commissioner under procedures designed to prevent unauthorized access to this information.

(7) The commissioner shall establish procedures whereby an individual may review criminal history record information of which that individual is subject. A reasonable processing fee may be charged. The commissioner shall establish procedures whereby an individual may challenge the completeness and accuracy of criminal history record information contained in the bureau's computerized criminal history files of which that individual is the subject. These procedures shall include provisions for amending any information found to be inaccurate or incomplete.

History: C. 1953, 77-26-16, enacted by L. 1980, ch. 15, § 2.

77-26-17. Communication systems.—For the purpose of expediting local, state, national, and international efforts in the detection and apprehension of criminals, the bureau may operate and coordinate such communication systems as may be required in the conduct of its duties as herein set forth.

History: C. 1953, 77-26-17, enacted by L. 1980, ch. 15, § 2.

77-26-18. Authority of officers and officials to take fingerprints, photographs and other data.—To the end that officers and officials described in sections 77-26-8 through 77-26-11 may be enabled to transmit the information required of them in these sections, such officers and officials shall have the authority and duty to take, or cause to be taken, fingerprints, photographs, and other related data of persons described in such sections.

History: C. 1953, 77-26-18, enacted by L. 1980, ch. 15, § 2.

77-26-19. Refusal to provide information—False information—Misdemeanor.—Any person who neglects or refuses to provide, or willfully withholds, any information under provisions of this chapter, or who willfully provides false information, or who willfully fails to do or perform any act so required to be done or performed by him under this chapter, or who shall

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hinder or prevent another from doing an act so required to be done by that other, shall be guilty of a class B misdemeanor.

History: C. 1953, 77-26-19, enacted by L. 1980, ch. 15, § 2.

77-26-20. Unauthorized removal, destruction, alteration or disclosure of records—Misdemeanor.—Any person who, except by the authority of and in compliance with procedures as established by the commissioner, willfully removes, destroys, alters, mutilates or discloses the contents of any file or record of the bureau shall be guilty of a class B misdemeanor.

History: C. 1953, 77-26-20, enacted by L. 1980, ch. 15, § 2.

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	20-2051	X		
2. Privacy and Security Council	E.O. #31	X		
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	20-2053	X		
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	20-2053	X		
3.12 Authorizes to Private Sector				
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	20-2053	X		
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	20-2053	X		
3.22 Authorizes to Private Sector				
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	20-2053	X		
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	20-2053	X		
3.32 Authorizes to Private Sector				
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy				
5. Right to Challenge				
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information				
8. Purging Conviction Information				

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information				
11. Removal of Disqualifications				
12. Right to State Non-Existence of Record				
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	20-2054 20-2053(b)	X X		
14.2 Auditing Requirements				
14.3 Other Accuracy/Completeness Requirements				
15. Dedication				
16. Civil Remedies	1-319,320 20-2054(b)	X X		
17. Criminal Penalties				
18. Public Records	1-315 et. seq.	X		
19. Separation of Files				
20. Regulation of Intelligence Collection	20-1954	X		
21. Regulation of Intelligence Dissemination	20-1955	X		
22. Security				
22.1 Physical (Building) Security				
22.2 Administrative Security				
22.3 Computer Security				
23. Transaction Logs				
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)	1-317(b)(5)	X		
27. FOIA (Excluding CJI)	1-317(b)(5) 20-2056	X X		
28. Central State Repository	20-2051	X		

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	9-109(1) 9-111.4	X		X
2. Privacy and Security Council	9-109	X		
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	19.2-389			X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	19.2-389			X
3.12 Authorizes to Private Sector	19.2-389			X
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	19.2-389			X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	19.2-389			X
3.22 Authorizes to Private Sector	19.2-389			X
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies	19.2-389			X
3.25 Prohibits to Private Sector	19.2-389			X
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	19.2-389			X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	19.2-389			X
3.32 Authorizes to Private Sector	19.2-389			X
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	Reg. 5.0 9.111.11	X	X	
5. Right to Challenge	9.111.11 Reg. 6.0, 7.0, 8.0	X	X	
6. Judicial Review of Challenged Information	9.111.11	X		
7. Purging Non-Conviction Information	Reg. 13.0-13.4 9-111.9 19.2-392.2	X	X X	
8. Purging Conviction Information	9-111.9 Reg. 13.0-13.4	X	X	

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information	9-111.9 Reg. 13.0-13.4	X	X	
10. Sealing Conviction Information	9-111.9 Reg. 13.0-13.4	X	X	
11. Removal of Disqualifications				
12. Right to State Non-Existence of Record	19.2-392.4		X	
13. Research Access	19.2-389			X
14. Accuracy and Completeness	Gen. Reg. 3.0		X	
14.1 Disposition Reporting Requirements	Reg. 3.0 19.2-390		X	X
14.2 Auditing Requirements	Reg. 12.0 9-111.5	X	X	
14.3 Other Accuracy/Completeness Requirements	9.111.10 19.2-389.D	X		X
15. Dedication				
16. Civil Remedies	2.1-346.1 9-111.12	X X		
17. Criminal Penalties	9.111.13 19.2-392.4.C	X	X	
18. Public Records	42.1-76	X		
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security				
22.1 Physical (Building) Security	Reg. 14.3 9-111.10	X	X	
22.2 Administrative Security	Reg. 14.4		X	
22.3 Computer Security	Reg. 14.5, 14.6		X	
23. Transaction Logs	9-111.11 Reg. 4.0	X	X	
24. Training Employees	Reg. 14.4C		X	
25. Listing of Information Systems				
26. FOIA (Including CJI)	2.1-342(b)(1)			X
27. FOIA (Excluding CJI)	2.1-342(b)(1) 2.1-384(3), (7)			X X
28. Central State Repository	19.2-388			X

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Virginia Code

§ 2.1-340. Short title.

Cross reference. — As to confidentiality of information acquired by the Alcoholic Beverage Control Commission in the course of its transactions, see § 4-24.1.

§ 2.1-340.1. Policy of chapter.

Law Review.
For survey of Virginia administrative law for year 1977-1978, see 64 Va. L. Rev. 1365 (1978).

§ 2.1-341. Definitions. — The following terms, whenever used or referred to in this chapter, shall have the following meanings, respectively, unless a different meaning clearly appears from the context:

(a) *"Meeting"* or *"meetings"* means the meetings, when sitting as a body or entity, or as an informal assemblage of (i) as many as three members, or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties; municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors of State institutions of higher education; and other organizations, corporations or agencies in the Commonwealth, supported wholly or principally by public funds. The notice provisions of this chapter shall not apply to the said informal meetings or gatherings of the members of the General Assembly. Nothing in this chapter shall be construed to make unlawful the gathering or attendance of two or more members of a body or entity at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the body or entity.

(b) *"Official records"* means all written or printed books, papers, letters, documents, maps and tapes, photographs, films, sound recordings, reports or other material, regardless of physical form or characteristics, prepared, owned, or in the possession of a public body or any employee or officer of a public body in the transaction of public business.

(c) *"Executive meeting"* or *"closed meeting"* means a meeting from which the public is excluded.

(d) *"Open meeting"* or *"public meeting"* means a meeting at which the public may be present.

(e) *"Public body"* shall mean any of the groups, agencies or organizations enumerated in subsection (a) of this section.

(f) *"Scholastic records"* means those records, files, documents, and other materials containing information about a student and maintained by a public body which is an educational agency or institution or by a person acting for such agency or institution, but, for the purpose of access by a student, does not include (i) financial records of a parent or guardian nor (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute. (1968, c. 479; 1970, c. 456; 1974, c. 332; 1975, c. 307; 1977, c. 677; 1978, cc. 573, 826; 1979, cc. 369; 687; 1980, c. 754.)

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The 1980 amendment substituted "Commonwealth" for "State" in three places in subdivision (a) and inserted "or any employee or officer of a public body" near the end of subdivision (b).

§ 2.1-342. Official records to be open to inspection; procedure for requesting records and responding to request; charges; exceptions to application of chapter. — (a) Except as otherwise specifically provided by law, all official records shall be open to inspection and copying by any citizens of this Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied to any such citizen of this Commonwealth, nor to representatives of newspapers and magazines with circulation in this Commonwealth, and representatives of radio and television stations broadcasting in or into this Commonwealth; provided, that the custodian of such records shall take all necessary precautions for their preservation and safekeeping. Any public body covered under the provisions of this chapter shall make an initial response to citizens requesting records open to inspection within fourteen calendar days from the receipt of the request by the public body. Such citizen request shall designate the requested records with reasonable specificity. If the requested records or public body are excluded from the provisions of this chapter, the public body to which the request is directed shall within fourteen calendar days from the receipt of the request tender a written explanation as to why the records are not available to the requestor. Such explanation shall make specific reference to the applicable provisions of this chapter or other Code sections which make the requested records unavailable. In the event a determination of the availability of the requested records may not be made within the fourteen-calendar-day period, the public body to which the request is directed shall inform the requestor as such, and shall have an additional ten calendar days in which to make a determination of availability. A specific reference to this chapter by the requesting citizen in his records request shall not be necessary to invoke the time limits for response by the public body. The public body may make reasonable charges for the copying and search time expended in the supplying of such records; however, in no event shall such charges exceed the actual cost of the public body in supplying such records. Such charges for the supplying of requested records shall be estimated in advance at the request of the citizen.

(b) The following records are excluded from the provisions of this chapter:

(1) Memoranda, correspondence, evidence and complaints related to criminal investigations, reports submitted to the State and local police in confidence, and all records of persons imprisoned in a penal institution in this Commonwealth provided such records relate to the said imprisonment; provided, however, that information in the custody of law-enforcement officials relative to the identity of any individual other than a juvenile who is arrested and charged, and the status of the charge of arrest, shall not be excluded from the provisions of this chapter.

(2) Confidential records of all investigations of applications for licenses and all licensees made by or submitted to the Alcoholic Beverage Control Commission.

(3) State income tax returns, scholastic records and personnel records, except that such access shall not be denied to the person who is the subject thereof, and medical and mental records, except that such records can be personally reviewed by the subject person or a physician of the subject person's choice; provided, however, that the subject person's mental records may not be personally reviewed by such person when the subject person's treating physician has made a part of such person's records a written statement that in his opinion a review of such records by the subject person would be injurious to the subject person's physical or mental health or well-being. Where the

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person who is the subject of scholastic or medical and mental records is under the age of eighteen, his right of access may be asserted only by his parent or guardian, except in instances where the person who is the subject thereof is an emancipated minor or a student in a state-supported institution of higher education.

(4) Memoranda, working papers and correspondence held or requested by members of the General Assembly or by the office of the Governor or Lieutenant Governor, Attorney General or the mayor or other chief executive officer of any political subdivision of the Commonwealth or the president or other chief executive officer of any state-supported institutions of higher education.

(5) Memoranda, working papers and records compiled specifically for use in litigation and material furnished in confidence with respect thereto.

(6) Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment, or (iii) receipt of an honor or honorary recognition.

(7) Library records which can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.

(8) Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, (iii) qualifications for any license or certificate issued by any public body.

As used in this subsection (8), "test or examination" shall include (i) any scoring key for any such test or examination, and (ii) any other document which would jeopardize the security of such test or examination. Nothing contained in this subsection (8) shall prohibit the release of test scores or results as provided by law, or to limit access to individual records as is provided by law, provided, however, that the subject of such employment tests shall be entitled to review and inspect all documents relative to his performance on such employment tests.

When, in the reasonable opinion of such public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, such test or examination shall be made available to the public; provided, however, that minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

(9) Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Regulatory Boards or any board in that department on individual licensees or applicants; provided, however, that such material may be made available during normal working hours for copying, at the requestor's expense, by the individual who is subject thereof, in the offices of the Department of Health Regulatory Boards or in the offices of any health regulatory board, whichever may possess the material.

(10) Records of active investigations being conducted by the Department of Health Regulatory Boards or by any health regulatory board in the State.

(11) Memoranda, working papers and records recorded in or compiled exclusively for executive or closed meetings lawfully held pursuant to § 2.1-344.

(c) Neither any provision of this chapter nor any provision of chapter 26 (§ 2.1-377 et seq.) of this title shall be construed as denying public access to records of the position, job classification, official salary or rate of pay of, and to records of the allowances or reimbursements for expenses paid to any public

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officer, official or employee at any level of State, local or regional government in this Commonwealth whatsoever; provided, however, that the provisions of this subsection shall not apply to records of the official salaries or rates of pay of public employees whose annual rate of pay is ten thousand dollars or less. (1968, c. 479; 1973, c. 461; 1974, c. 332; 1975, cc. 307, 312; 1976, cc. 640, 709; 1977, c. 677; 1978, c. 810; 1979, cc. 682, 684, 686, 689; 1980, cc. 678, 754.)

Cross reference. — As to confidentiality of records of the ombudsman program of the Office on Aging, see § 2.1-373.2. For provision that the Freedom of Information Act shall not apply to certified abstracts of votes or any other documents used by the State Board of Elections in ascertaining the results of an election until such results have been finally determined by the Board, see § 24.1-152.

The 1980 amendments. — The first 1980 amendment added subdivisions (9) and (10) to subsection (b).

The second 1980 amendment substituted "Commonwealth" for "State" throughout the section, substituted "Commission" for "Board" at the end of subdivision (2) of subsection (b) and added subdivision (11) in subsection (b).

§ 2.1-344. Executive or closed meetings. — (a) Executive or closed meetings may be held only for the following purposes:

(1) Discussion or consideration of employment, assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of public officers, appointees or employees of any public body, and evaluation of performance of departments or schools of State institutions of higher education where such matters regarding such individuals might be affected by such evaluation.

(1a) Discussion or consideration of admission or disciplinary matters concerning any student or students of any State institution of higher education or any State school system; provided, however, that any such student and legal counsel and, if such student be a minor, such student's parents or legal guardians, shall be permitted to be present at an executive or closed meeting, if such student, parents or guardians so request in writing, and such request is submitted to the presiding officer of the appropriate board.

(2) Discussion or consideration of the condition, acquisition or use of real property for public purpose, or of the disposition of publicly held property, or of plans for the future of a State institution of higher education which could affect the value of property owned or desirable for ownership by such institution.

(3) The protection of the privacy of individuals in personal matters not related to public business.

(4) Discussion concerning a prospective business or industry where no previous announcement has been made of the business' or industry's interest in locating in the community.

(5) The investing of public funds where competition or bargaining is involved, where if made public initially the financial interest of the governmental unit would be adversely affected.

(6) Consultation with legal counsel and briefings by staff members, consultants or attorneys, pertaining to actual or potential litigation, or other legal matters within the jurisdiction of the public body, and discussions or consideration of such matters without the presence of counsel, staff, consultants, or attorneys.

(7) In the case of boards of visitors of State institutions of higher education, discussion or consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts for services or work to be performed by such institution; provided, however, that the terms and conditions of any such gifts, bequests, grants and contracts made by a foreign government, a foreign legal entity or a foreign person and accepted by a State institution of higher education shall be subject to public disclosure upon

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written request to the appropriate board of visitors. For the purpose of this subsection, (i) "foreign government" shall mean any government other than the United States government or the government of a state or a political subdivision thereof (ii) "foreign legal entity" shall mean any legal entity created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under the laws of a foreign government (iii) "foreign person" shall mean any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.

(8) Discussion or consideration of honorary degrees.

(9) Discussion or consideration of tests or examinations or other documents excluded from this chapter pursuant to § 2.1-342 (b) (8).

(b) No meeting shall become an executive or closed meeting unless there shall have been recorded in open meeting an affirmative vote to that effect by the public body holding such meeting, which motion shall state specifically the purpose or purposes hereinabove set forth in this section which are to be the subject of such meeting and a statement included in the minutes of such meeting which shall make specific reference to the applicable exemption or exemptions as provided in subsection (a) or § 2.1-345. A general reference to the provisions of this chapter or to the exemptions of subsection (a) shall not be sufficient to satisfy the requirements for an executive or closed meeting. The public body holding such an executive or closed meeting shall restrict its consideration of matters during the closed portions only to those purposes specifically exempted from the provisions of this chapter.

(c) No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in an executive or closed meeting shall become effective unless such public body, following such meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation or motion which shall have its substance reasonably identified in the open meeting.

(d) Nothing in this section shall be construed to prevent the holding of conferences between two or more public bodies, or their representatives, but these conferences shall be subject to the same regulations for holding executive or closed sessions as are applicable to any other public body. (1968, c. 479; 1970, c. 456; 1973, c. 461; 1974, c. 332; 1976, cc. 467, 709; 1979, cc. 369, 684; 1980, cc. 221, 475, 476, 754.)

The 1980 amendments. — The first 1980 amendment substituted "or" for "of" preceding "disciplinary matters" near the beginning of subdivision (1a) of subsection (a) and "only to those purposes" for "to only those purposes" near the end of the third sentence of subsection (b).

The second 1980 amendment added "which shall have its substance reasonably identified in the open meeting" at the end of subsection (c).

The third 1980 amendment added the proviso to the first sentence of subdivision (7) in subsection (a) and added the second sentence of that subdivision.

The fourth 1980 amendment substituted "or" for "of" preceding "disciplinary matters" near the beginning of subdivision (1a) in subsection (a).

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CHAPTER 26.

PRIVACY PROTECTION ACT OF 1976.

Sec.

2.1-384. Systems to which chapter inapplicable.

§ 2.1-384. Systems to which chapter inapplicable. — The provisions of this chapter shall not be applicable to personal information systems:

1. Maintained by any court of this Commonwealth;
2. Which may exist in publications of general circulation;
3. Contained in the Criminal Justice Information System as defined in §§ 9-111.3 through 9-111.14;
4. Contained in the Virginia Juvenile Justice Information System as defined in §§ 16.1-222 through 16.1-225;
5. Maintained by agencies concerning persons required to be licensed by law in this State to engage in the practice of any professional occupation, in which case the names and addresses of persons applying for or possessing any such license may be disseminated upon written request to a person engaged in the profession or business of offering professional educational materials or courses for the sole purpose of providing such licensees or applicants for licenses with informational materials relating solely to available professional educational materials or courses, provided such disseminating agency is reasonably assured that the use of such information will be so limited;
6. Maintained by the Parole Board, the Crime Commission, the Judicial Inquiry and Review Commission, and the Department of Alcoholic Beverage Control; and
7. Maintained by the police departments of cities, counties, and towns and which deal with investigations and intelligence gathering relating to criminal activity. (1976, c. 597; 1979, c. 685; 1980, c. 752.)

The 1980 amendment added subdivision 7.

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CHAPTER 16.

CRIMINAL JUSTICE SERVICES COMMISSION.

Article 1.

In General.

Sec.

9-107.1. Commission established; appointment; terms; vacancies; members not disqualified from holding other offices; designation of chairman; expenses; meetings; reports.
9-108.1. Definitions.
9-109. Powers.
9-109.2:1. Establishment of compulsory in-service and advanced training standards for jailers or custodial officers and corrections officers.
9-109.3. Exemptions of certain persons from certain training requirements.
9-110. Establishment and maintenance of police training programs.

Article 2.

Criminal Justice Information System.

9-111.9. Sealing of criminal history record information.
9-111.11:1. Information not subject to review and correction of information.

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ARTICLE 1.

In General.

§ 9-107.1. Commission established; appointment; terms; vacancies; members not disqualified from holding other offices; designation of chairman; expenses; meetings; reports. — A. On and after November one, nineteen hundred seventy-six, the Criminal Justice Officers Training and Standards Commission is abolished and there is hereby created a Criminal Justice Services Commission, hereinafter called "the Commission" in the Executive Department. The Commission shall be composed of sixteen members, as follows: the Superintendent of the Department of State Police or his designee; the Director of the Department of Corrections or his designee; the Executive Secretary of the Supreme Court of Virginia or his designee; the following appointments by the Governor: two sheriffs representing the Virginia State Sheriff's Association from among names submitted by the Association; two representatives of the Chiefs of Police Association from among names submitted by the Association; two Commonwealth's attorneys from among names submitted by the Association for Commonwealth's Attorneys; two persons from among mayors, city and town managers, and members of municipal councils representing the Virginia Municipal League from among names submitted by the League; two persons from among county executives, managers, and members of county boards of supervisors representing the Virginia Association of Counties from among names submitted by the Association; and three members at large.

B. The members of the Commission appointed by the Governor shall serve for terms of four years; provided that no member shall serve beyond the time when he holds the office or employment by reason of which he was initially eligible for appointment. Notwithstanding anything in this chapter to the contrary, the terms of members initially appointed to the Commission by the Governor upon its establishment shall be: five for three years and five for four years. The Governor, at the time of appointment, shall designate which of the terms are respectively for three and four years. Any vacancy on the Commission shall be filled in the same manner as the original appointment, but for the unexpired term.

C. The Commission annually shall elect its chairman and vice-chairman from among the members of the Commission.

D. Notwithstanding any provision of any statute, ordinance, local law, or charter provision to the contrary, membership on the Commission shall not disqualify any member from holding any other public office or employment, or cause the forfeiture thereof.

E. Members of the Commission shall be entitled to receive reimbursement for any actual expenses incurred as a necessary incident to such service.

F. The Commission shall hold no less than four regular meetings a year. Subject to the requirements of this subsection, the chairman shall fix the times and places of meetings, either on his own motion or upon written request of any five members of the Commission.

G. The Commission shall report annually to the Governor and General Assembly on its activities, and may make such other reports as it deems advisable. (1976, c. 771; 1978, c. 137; 1980, c. 728.)

Cross reference. — As to compensation and expenses of boards, commissions and similar bodies, see §§ 2.1-20.2 to 2.1-20.4.

The 1980 amendment deleted "shall serve without compensation, but" following "Commission" in subsection E.

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§ 9-108.1. Definitions. — The following words, whenever used in this chapter, or in chapter 23 (§ 19.2-387 et seq.) of Title 19.2, shall have the following meanings, unless the context otherwise requires:

A. *"Administration of criminal justice"* means performance of any activity directly involving the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection, storage, and dissemination of criminal history record information.

B. *"Criminal justice agency"* means a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities but only to the extent that it does so.

C. *"Criminal history record information"* means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges, and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by chapter 11 (§ 16.1-226 et seq.), of Title 16.1, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

D. *"Correctional status information"* means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

E. *"Criminal justice information system"* means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

F. *"Commission"* means the Criminal Justice Services Commission.

G. *"Dissemination"* means any transfer of information, whether orally, in writing, or by electronic means. The term does not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and right to know the information..

H. *"Law-enforcement officer"* means any full-time employee of a police department or sheriff's office which is a part of or administered by the State or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of this State, and shall include any member of the Enforcement or Inspection Division of the Alcoholic Beverage Control Commission vested with police authority.

I. *"Conviction data"* means information in the custody of any criminal justice agency relating to a judgment of conviction, and the consequences arising therefrom, in any court. (1976, c. 771; 1977, cc. 357, 626; 1979, c. 651.)

The 1979 amendment substituted "chapter 11 seq.)" in the second sentence of subdivision C. (§ 16.1-226 et seq.)" for "chapter 8 (§ 16.1-139 et

§ 9-109. Powers. — In addition to powers conferred upon the Commission elsewhere in this chapter, the Commission shall have power to:

(1) Promulgate rules and regulations, pursuant to chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia, for the administration of this chapter including the authority to require the submission of reports and information by police officers within this State. Any proposed rules and regulations concerning the privacy, confidentiality, and security of criminal justice information shall be submitted for review and comment to any board, commission, committee or other body which may be established by the General Assembly to regulate the privacy, confidentiality, and security of information collected and maintained by the Commonwealth or any political subdivision thereof.

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(2) Establish compulsory minimum training standards subsequent to employment as a law-enforcement officer, (a) in permanent positions, and (b) in temporary or probationary status, and establish the time required for completion of such training.

(3) Establish compulsory minimum curriculum requirements for in-service and advanced courses and programs for schools, whether located in or outside the Commonwealth, which are operated for the specific purpose of training law-enforcement officers.

(3A) Establish compulsory training courses for law-enforcement officers in laws and procedures relating to entrapment, search and seizure, evidence and techniques of report writing, which training shall be completed by law-enforcement officers who have not completed the compulsory training standards set out in (2) hereof, prior to assignment of any such officers to undercover investigation work; provided, that failure to complete such training shall not, for that reason, constitute grounds to exclude otherwise properly admissible testimony or other evidence from such officer resulting from any undercover investigation.

(4) Consult and cooperate with counties, municipalities, agencies of this State, other federal and State governmental agencies, and with universities, colleges, junior colleges, and other institutions, whether located in or outside the Commonwealth, concerning the development of police training schools and programs or courses of instruction.

(5) Approve institutions, curriculum and facilities, whether located in or outside the Commonwealth, for school operation for the specific purpose of training law-enforcement officers; but this shall not prevent the holding of any such school whether approved or not.

(5a) Establish compulsory minimum qualifications of certification and recertification for individuals instructing in criminal justice training schools approved by the Commission.

(6) Make or encourage studies of any aspect of law-enforcement administration.

(7) Conduct and stimulate research by public and private agencies which shall be designed to improve police administration and law enforcement.

(8) Make recommendations concerning any matter within its purview pursuant to this chapter.

(9) [Repealed.]

(10) Adopt and amend rules and regulations, consistent with law, for its internal management and control.

(11) Enter into contracts or do such things as may be necessary and incidental to the administration of its authority pursuant to this chapter.

(12) Coordinate its activities with those of any interstate system for the exchange of criminal history record information, to nominate one or more of its members to serve upon the council or committee of any such system, and to participate when and as deemed appropriate in any such system's activities and programs.

(13) Conduct such inquiries and investigations as it deems appropriate to carry out its functions under this chapter and, in conducting such inquiries and investigations, the Commission shall have the authority to require any criminal justice agency to submit to the Commission information, reports, and statistical data with respect to its policy and operation of information systems or with respect to its collection, storage, dissemination, and usage of criminal history record information and correctional status information, and such criminal justice agencies shall submit to the Commission such information, reports, and data as are reasonably required.

(14) Conduct a continuing study and review of questions of individual privacy and confidentiality of criminal history record information and correctional status information.

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(15) Conduct audits as required by § 9-111.5.

(16) Advise criminal justice agencies and to initiate educational programs for such agencies with respect to matters of privacy, confidentiality, and security as they pertain to criminal history record information and correctional status information.

(17) Maintain a liaison with any board, commission, committee, or other body which may be established by law, executive order, or resolution to regulate the privacy and security of information collected by the Commonwealth or any political subdivision thereof.

(18) Issue regulations establishing guidelines and standards for the collection, storage, and dissemination of criminal history record information and correctional status information and the privacy, confidentiality, and security thereof necessary to implement State and federal statutes, federal regulations, and court orders.

(19) The Department of State Police shall be the control terminal agency for the Commonwealth and perform all functions required of a control terminal agency by the rules and regulations of the National Crime Information Center. Notwithstanding anything to the contrary in this article, the Central Criminal Records Exchange and the Department of State Police shall remain the central repository for criminal history record information in the Commonwealth and the Department shall continue to be responsible for the management and operation of such exchange. (1968, c. 740; 1976, c. 771; 1978, c. 689; 1979, c. 705; 1980, c. 309.)

The 1979 amendment substituted "schools, whether located in or outside the Commonwealth, which are operated for the specific purpose" for "schools operated by or for the State or any political subdivisions thereof for the specific purpose" in subdivision (3), substituted "other federal and State governmental agencies" for "other governmental agencies" and inserted "whether located in or outside the Commonwealth" in subdivision (4), and substituted "approve institutions, curriculum and facilities, whether located in or outside the Commonwealth, for school operation for the specific purpose" for "approve institutions and facilities for school operation by or for the State or any political subdivision thereof for the specific purpose" in subdivision (5).

The 1980 amendment added subdivision (5a).

§ 9-109.2:1. Establishment of compulsory in-service and advanced training standards for jailers or custodial officers and corrections officers. — The Commission shall have the power to establish compulsory in-service and advanced training standards for those persons employed as jailers or custodial officers and corrections officers under the provisions of Title 53. (1979, c. 471.)

§ 9-109.3. Exemptions of certain persons from certain training requirements. — The Executive Director of the Commission, with the approval of the Commission, whose decision shall be final, may exempt a chief of police or any law-enforcement officer or any courthouse and courtroom security officer, jailer or custodial officer or corrections officer of the State or any political subdivision of the Commonwealth, who has had previous experience and training as a law-enforcement officer, courthouse and courtroom security officer, jailer or custodial officer or corrections officer with any law-enforcement or custodial agency, from the mandatory attendance at any or all courses which are required for the successful completion of the compulsory minimum training standards established by the Commission. The exemption authorized by this section shall be available to all law-enforcement officers, courthouse and courtroom security officers, jailers and custodial officers, and corrections officers, regardless of an officer's date of initial employment, and shall entitle such officer exempted from compliance with compulsory minimum training standards pursuant to §§ 9-109 (2) (a), 9-109.1 and 9-109.2 to be deemed in compliance with §§ 9-109 (2) (a), 9-109.1 and 9-109.2 and eligible for the minimum salary established by § 14.1-73.2, provided that such officer is otherwise qualified under § 14.1-73.2. (1974, c. 125; 1975, c. 631; 1979, c. 471.)

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CHAPTER 23.

CENTRAL CRIMINAL RECORDS EXCHANGE.

Sec.
19.2-388. Duties and authority of Exchange.
19.2-389. Dissemination of criminal history record information.
19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace and clerks of court; Exchange may receive, etc., material submitted by other agencies.
19.2-392. Fingerprints and photographs by police authorities.

§ 19.2-387. Exchange to operate as a division of Department of State Police; authority of Superintendent of State Police.

Cross references. — As to the criminal justice information system to be established by the Criminal Justice Officers Training and Standards Commission, see §§ 9-111.3 to 9-111.14. As to civil remedies for violations of this chapter, see § 9-111.12. As to penalty for disseminating information in violation of this chapter, see § 9-111.13.

§ 19.2-388. Duties and authority of Exchange. — It shall be the duty of the Central Criminal Records Exchange to receive, classify and file criminal history record information as defined in § 9-108.1 and other records required to be reported to it by § 19.2-390. The Exchange shall also receive, record, and file the F.B.I. record of any person as furnished by the Federal Bureau of Investigation. Such records may also contain any information made available to the Exchange by any law-enforcement agency or any State official or agency prior to March fifteen, nineteen hundred sixty-eight. The Exchange is authorized to prepare and furnish to all State and local law-enforcement officials and agencies, and to clerks of circuit courts and district courts and to corrections and penal officials, forms which shall be used for the making of such reports. (Code 1950, § 19.1-19.2; 1966, c. 669; 1968, c. 537; 1970, c. 118; 1975, c. 495; 1976, c. 771.)

The 1976 amendment, effective Nov. 1, 1976, substituted "criminal history record information as defined in § 9-108.1 and other records" for "records" in the first sentence and substituted "district courts" for "courts not of record" and inserted "and to corrections and penal officials" in the last sentence.

§ 19.2-389. Dissemination of criminal history record information. — A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to: (i) authorized officers or employees of criminal justice agencies, as defined by § 9-108.1, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants; (ii) such other individuals and agencies which require criminal history record information to implement a State or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements and/or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending; (iii) individuals and

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agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, insure the security and confidentiality of the data; (iv) individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency which shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and insure the confidentiality and security of the data; (v) agencies of State or federal government which are authorized by State or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information; and (vi) individuals and agencies where authorized by court order or court rule; (vii) agencies of any political subdivision of the State for the conduct of investigations of applicants for public employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, license under consideration; (vii)(a) public or private agencies when and as required by federal or State law or interstate compact to investigate applicants for foster or adoptive parenthood subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or State authority or court as may be required to comply with an express requirement of law for such further dissemination; (viii) to the extent permitted by federal law or regulation, public service companies as defined in § 56-1 of the Code of Virginia, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration; and (ix) the appropriate authority for purposes of granting citizenship and for purposes of international travel, including but not limited to, issuing visas and passports; (x) a person requesting a copy of his own conviction data as defined in § 9-108.1 I, at his costs; and (xi) as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case, and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgements, the Central Criminal Records Exchange or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; provided, however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

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D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to assure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.1-135.1. (Code 1950, § 19.1-19.2; 1966, c. 669; 1968, c. 537; 1970, c. 118; 1975, c. 495; 1976, c. 771; 1977, c. 626; 1978, c. 350; 1979, c. 480.)

The 1976 amendment, effective Nov. 1, 1976, rewrote this section.

The 1977 amendment, in the first paragraph, redesignated former clause (ix) as clause (xi) and added present clauses (ix) and (x). The amendment also added the third paragraph.

The 1978 amendment rewrote the first sentence and added the second sentence in the third paragraph of subsection A, inserted "on offenses required to be reported to the Central Criminal Records Exchange" in the first sentence of subsection D and added the third and fourth sentences of subsection D.

The 1979 amendment, in the first paragraph of subsection A, added clause (vii)(a).

§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace and clerks of court; Exchange may receive, etc., material submitted by other agencies. — (a) Every State official or agency having the power to arrest, the sheriffs of counties, the police officials of cities and towns, and any other local law-enforcement officer or conservator of the peace having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange, on forms provided by it, of any arrest on a charge of treason or of any felony or of any offense punishable as a misdemeanor under Title 54, or Class 1 and 2 misdemeanors under Title 18.2, except an arrest for a violation of article 2, of chapter 7 of Title 18.2 (§ 18.2-266 et seq.) or for violation of article 2 of chapter 9 of Title 18.2 (§ 18.2-415), or any similar ordinance of any county, city or town. Such reports shall contain such information as shall be required by the Exchange and shall be accompanied by fingerprints of the individual arrested and information as to whether a photograph of the individual is available. For persons arrested and released on summonses in accordance with § 19.2-74, such report shall not be required until after a disposition of guilt is entered by a competent judicial authority. Upon such disposition, the court shall remand the individual to the custody of the office of the chief law-enforcement officer of the county or city, and it shall be the duty of such law-enforcement officer, or his designee who may be the arresting officer, to insure that such report is completed after a determination of guilt. The court shall require the officer to complete the report immediately following his conviction, and the individual shall be discharged from custody forthwith, unless the court has imposed a jail sentence to be served by him.

(b) The clerk of each circuit court and district court shall make a report to the Central Criminal Records Exchange of any dismissal, indefinite postponement or continuance, charge still pending due to mental incompetency, nolle prosequi, acquittal, or conviction of, or failure of a grand jury, to return a true bill as to, any person charged with an offense listed in subsection (a) of this section. In the case of offenses not required to be reported to the Exchange by subsection (a) of this section, the reports of any of the

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foregoing dispositions shall be filed by the law-enforcement agency making the arrest with the arrest record required to be maintained by § 15.1-135.1. No such report of conviction in a district court shall be filed unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction has been nullified in any manner, he shall also make a report of that fact, and each clerk of a circuit court, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange, or to the law-enforcement agency making the arrest in the case of offenses not required to be reported to the Exchange, on forms provided by the Exchange, any reversal or other amendment to a prior sentence reported to the Exchange. For each such report made by a clerk of a circuit court, he shall be allowed a fee of fifty cents to be paid from the appropriation for criminal charges.

(c) In addition to those offenses enumerated in paragraph (a) of this section, the Central Criminal Records Exchange may receive, classify and file any other fingerprints and records of arrest or confinement submitted to it by any law-enforcement agency or any correctional institution.

(d) Corrections officials responsible for maintaining correctional status information, as required by the rules and regulations of the Criminal Justice Services Commission, with respect to individuals about whom reports have been made under the provisions of this chapter shall make reports of changes in correctional status information to the Central Criminal Records Exchange on forms provided by it.

(e) Officials responsible for reporting disposition of charges, and correctional changes of status of individuals under this section shall adopt procedures reasonably designed at a minimum (i) to insure that such reports are accurately made as soon as feasible by the most expeditious means and in no instance later than ninety days after occurrence of the disposition or correctional change of status; and (ii) to report promptly any correction, deletion, or revision of the information.

(f) Upon receiving a correction, deletion, or revision of information, the Central Criminal Records Exchange shall notify all criminal justice agencies known to have previously received the information. (Code 1950, § 19.1-19.3; 1966, c. 669; 1968, c. 724; 1970, c. 191; 1971, Ex. Sess., c. 107; 1974, c. 575; 1975, cc. 495, 584; 1976, cc. 336, 572, 771; 1978, cc. 467, 825; 1979, c. 378.)

Cross reference. — As to punishment for Class 1 and 2 misdemeanors, see § 18.2-11.

The 1976 amendments. — The first 1976 amendment added "except a violation of chapter 7, article 2 (§ 18.2-266 et seq.) of this latter title" following "misdemeanors under Title 18.2" in the first sentence of subsection (a).

The second 1976 amendment added "except for violations of chapter 7, article 2 (§ 18.2-266 et seq.) and chapter 9, article 2 (§ 18.2-415) of Title 18.2" at the end of the first sentence of subsection (a), substituted "circuit court" for "court of record" in the first, third and fourth sentences of subsection (b), and substituted "district court" for "court not of record" in the first and second sentences of subsection (b).

The third 1976 amendment, effective Nov. 1, 1976, added "except an arrest for a violation of article 2 of chapter 7 of Title 18.2 (§ 18.2-266 et seq.) or for violation of article 2 of chapter 9 of Title 18.2 (§ 18.2-415)" at the end of the first sentence of subsection (a). In subsection (b) the amendment substituted "circuit court" for "court of record" and "district court" for "court not of record" throughout the subsection, inserted "indefinite postponement or continuance, charge still pending due to mental incompetency" near the middle of the first sentence, added the second sentence, and inserted "or to the law-enforcement agency making the arrest in the case of offenses not required to be reported to the Exchange" and substituted "the Exchange" for "it" following "provided by" in the fourth sentence. The amendment also added subsections (d), (e) and (f).

The 1978 amendments. — The first 1978 amendment added "or any similar ordinance of any county, city or town" at the end of the first sentence of subsection (a).

The second 1978 amendment added, at the end of the third sentence of subsection (a), "and it shall be the duty of a law-enforcement officer to insure that such report is completed after a determination of guilt," rewrote the second

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sentence of subsection (b) and, in the third sentence of subsection (b), substituted "in a district court shall be filed" for "shall be made by the clerk of a district court."

The 1979 amendment deleted, at the end of the third sentence of subsection (a), "and it shall be the duty of a law-enforcement officer to insure that such report is completed after a determination of guilt" and added the fourth and fifth sentences of subsection (a).

§ 19.2-392. Fingerprints and photographs by police authorities. — All duly constituted police authorities having the power of arrest may take the fingerprints and photographs of any person arrested by them and charged with a felony or with any misdemeanor or arrest for which is to be reported by them to the Central Criminal Records Exchange, or when a person pleads guilty or is found guilty after being summoned in accordance with § 19.2-74. Such authorities shall make such records available to the Central Criminal Records Exchange. Such authorities are authorized to provide, on the request of duly appointed law-enforcement officers, copies of any fingerprint records they may have, and to furnish services and technical advice in connection with the taking, classifying and preserving of fingerprints and fingerprint records. (Code 1950, § 19.1-19.6; 1968, c. 722; 1975, c. 495; 1978, c. 825.)

The 1978 amendment added at the end of the first sentence "or when a person pleads guilty or is found guilty after being summoned in accordance with § 19.2-74."

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority				
2. Privacy and Security Council				
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies				
3.11 Authorizes to Govt. Non-Criminal Justice Agencies				
3.12 Authorizes to Private Sector				
3.13 Prohibits to Criminal Justice Agencies				
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3.15 Prohibits to Private Sector				
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3.20 Authorizes to Criminal Justice Agencies				
3.21 Authorizes to Govt. Non-Criminal Justice Agencies				
3.22 Authorizes to Private Sector				
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3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
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6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information				
8. Purging Conviction Information				

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
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13. Research Access				
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18. Public Records	3-881	X		
19. Separation of Files				
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22.3 Computer Security				
23. Transaction Logs				
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25. Listing of Information Systems				
26. FOIA (Including CJI)	3-881(g)	X		
27. FOIA (Excluding CJI)				
28. Central State Repository	19-2-388			X

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	10.97.090			X
2. Privacy and Security Council				
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	10.97.050(1)			X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	10.97.050(1)			X
3.12 Authorizes to Private Sector	10.97.050(1)			X
3.13 Prohibits to Criminal Justice Agencies				
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3.20 Authorizes to Criminal Justice Agencies	10.97.050(3)			X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	10.97.050(4)			X
3.22 Authorizes to Private Sector	10.97.050(4)			X
3.23 Prohibits to Criminal Justice Agencies				
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3.30 Authorizes to Criminal Justice Agencies	10.97.050(2)			X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	Reg. WAC 365-50-270 10.97.050(2)	X		X
3.32 Authorizes to Private Sector	Reg. WAC 365-50-270 10.97.050(2)	X		X
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
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4. Inspection				
4.1 Right to Inspect Only	43.43.730			X
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy	Reg. WAC 365-50-070 10.97.080	X		X
5. Right to Challenge	10.97.080 43.43.730 Reg. WAC 365-50-210	X		X X
6. Judicial Review of Challenged Information	43.43.730			X
7. Purging Non-Conviction Information	10.97.060			X
8. Purging Conviction Information				

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information				
11. Removal of Disqualifications				
12. Right to State Non-Existence of Record				
13. Research Access	Reg. WAC 446-20-190 10.97.050(6)	X		X
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	43.43.740 10.97.045			X X
14.2 Auditing Requirements	10.97.090(3)			X
14.3 Other Accuracy/Completeness Requirements	10.97.040			X
15. Dedication				
16. Civil Remedies	42.17.390 10.97.110			X X
17. Criminal Penalties	43.43.856 43.43.810 10.97.120			X X X
18. Public Records	42.17.250			X
19. Separation of Files				
20. Regulation of Intelligence Collection	43.43.854			X
21. Regulation of Intelligence Dissemination	43.43.854 43.43.856(2)			X
22. Security				
22.1 Physical (Building) Security	10.97.090(1)			X
22.2 Administrative Security	10.97.090(2)			X
22.3 Computer Security				
23. Transaction Logs	Reg. WAC 365-50-320 10.97.050(7)	X		X
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)				
27. FOIA (Excluding CJI)	43.43.710 42.17.250			X X
28. Central State Repository	43.43.700	X		

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Washington Revised Code Annotated

CHAPTER 10.97

WASHINGTON STATE CRIMINAL RECORDS PRIVACY ACT

Section

10.97.010 Declaration of policy.
10.97.020 Short title.
10.97.030 Definitions.
10.97.040 Dissemination of information shall state disposition of charge—Current and complete information required—Exceptions.
10.97.045 Disposition of criminal charge data to be furnished agency initiating criminal history record and state patrol.
10.97.050 Unrestricted dissemination of certain information—Dissemination of other information to certain persons or for certain purposes—Records of dissemination, contents.
10.97.060 Deletion of certain information, conditions.
10.97.070 Discretionary disclosure of suspect's identity to victim.
10.97.080 Inspection of information by subject—Limitations—Rules governing—Challenge of records and correction of information—Dissemination of corrected information.
10.97.090 Administration of Act by state patrol—Powers and duties.
10.97.100 Fees for dissemination of information.
10.97.110 Action for injunction and damages for violation of chapter—Measure of damages—Action not to affect criminal prosecution.
10.97.120 Penalty for violation of chapter—Criminal prosecution not to affect civil action.

Cross References

Division of Criminal Justice designated as state planning agency, see § 43.06.330.

10.97.010 Declaration of policy

The legislature declares that it is the policy of the state of Washington to provide for the completeness, accuracy, confidentiality, and security of criminal history record information and victim, witness, and complainant record information as defined in this chapter.

Added by Laws 1977, Ex.Sess., ch. 314, § 1.

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Library References

Criminal Law ⇐1222. C.J.S. Criminal Law § 2008 et seq.

10.97.020 Short title

This chapter may be cited as the Washington State Criminal Records Privacy Act.

Added by Laws 1977, Ex.Sess., ch. 314, § 2.

Historical Note

Reviser's Note: The phrase "This 1977 amendatory act" has been changed to "This chapter". This 1977 amendatory act [1977 ex.s. c 314] consists of chapter 10.97 RCW and of the amendments by 1977 ex.s. c 314 of RCW 42.17.310, 43.43.705, 43.43.710, 43.43.730, and 43.43.810.

Library References

Criminal Law ⇐1222. C.J.S. Criminal Law § 2008 et seq.

10.97.030 Definitions

For purposes of this chapter, the definitions of terms in this section shall apply.

(1) "Criminal history record information" means information contained in records collected by criminal justice agencies, other than courts, on individuals, other than juveniles, consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including sentences, correctional supervision, and release. The term includes information contained in records maintained by or obtained from criminal justice agencies, other than courts, which records provide individual identification of a person together with any portion of the individual's record of involvement in the criminal justice system as an alleged or convicted offender, except:

(a) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;

(b) Original records of entry maintained by criminal justice agencies to the extent that such records are compiled and maintained chronologically and are accessible only on a chronological basis;

(c) Court indices and records of public judicial proceedings, court decisions, and opinions, and information disclosed during public judicial proceedings;

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(d) Records of traffic violations which are not punishable by a maximum term of imprisonment of more than ninety days;

(e) Records of any traffic offenses as maintained by the department of licensing for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' or other operators' licenses and pursuant to RCW 46.52.130 as now existing or hereafter amended;

(f) Records of any aviation violations or offenses as maintained by the department of transportation for the purpose of regulating pilots or other aviation operators, and pursuant to RCW 47.68.330 as now existing or hereafter amended;

(g) Announcements of executive clemency.

(2) "Nonconviction data" consists of all criminal history record information relating to an incident which has not led to a conviction or other disposition adverse to the subject, and for which proceedings are no longer actively pending. There shall be a rebuttable presumption that proceedings are no longer actively pending if more than one year has elapsed since arrest, citation, or service of warrant and no disposition has been entered.

(3) "Conviction record" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject.

(4) "Conviction or other disposition adverse to the subject" means any disposition of charges, except a decision not to prosecute, a dismissal, or acquittal: *Provided, however,* That a dismissal entered after a period of probation, suspension, or deferral of sentence shall be considered a disposition adverse to the subject.

(5) "Criminal justice agency" means: (a) A court; or (b) a government agency which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

(6) "The administration of criminal justice" means performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The term also includes criminal identification activities and the collection, storage, dissemination

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of criminal history record information, and the compensation of victims of crime.

(7) "Disposition" means the formal conclusion of a criminal proceeding at whatever stage it occurs in the criminal justice system.

(8) "Dissemination" means disclosing criminal history record information or disclosing the absence of criminal history record information to any person or agency outside the agency possessing the information, subject to the following exceptions:

(a) When criminal justice agencies jointly participate in the maintenance of a single record keeping department as an alternative to maintaining separate records, the furnishing of information by that department to personnel of any participating agency is not a dissemination;

(b) The furnishing of information by any criminal justice agency to another for the purpose of processing a matter through the criminal justice system, such as a police department providing information to a prosecutor for use in preparing a charge, is not a dissemination;

(c) The reporting of an event to a record keeping agency for the purpose of maintaining the record is not a dissemination.

Added by Laws 1977, Ex.Sess., ch. 314, § 3. Amended by Laws 1979, ch. 158, § 5, eff. March 30, 1979; Laws 1979, Ex.Sess., ch. 36, § 1.

Historical Note

The first 1979 amendment substituted "licensing" for "motor vehicles" in subsec. (1)(e) and in subsec. (1)(f) substituted "department of transportation" for "aeronautics commission" and "47.68.330" for "14.04.330".

The second 1979 amendment substituted "any" for "one" following "information by" in subsec. (8)(b) and deleted "resulting from an investigation by that department" following "in preparing a charge" in the same subsection. The amendment also deleted subsec. (9) which provided:

"'State planning agency' shall mean that agency designated by law or executive order to fulfill the functions established by 42 U.S.C. Section 3701, the 'Omnibus Crime Control and Safe Streets Act of 1968', as amended."

Library References

Criminal Law ⇐1222. C.J.S. Criminal Law § 2008 et seq.

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10.97.040 Dissemination of information shall state disposition of charge—Current and complete information required—Exceptions

No criminal justice agency shall disseminate criminal history record information pertaining to an arrest, detention, indictment, information, or other formal criminal charge made after December 31, 1977, unless the record disseminated states the disposition of such charge to the extent dispositions have been made at the time of the request for the information: *Provided, however,* That if a disposition occurring within ten days immediately preceding the dissemination has not been reported to the agency disseminating the criminal history record information, or if information has been received by the agency within the seventy-two hours immediately preceding the dissemination, that information shall not be required to be included in the dissemination: *Provided further,* That when another criminal justice agency requests criminal history record information, the disseminating agency may disseminate specific facts and incidents which are within its direct knowledge without furnishing disposition data as otherwise required by this section, unless the disseminating agency has received such disposition data from either: (1) the state patrol, or (2) the court or other criminal justice agency required to furnish disposition data pursuant to RCW 10.97.045.

No criminal justice agency shall disseminate criminal history record information which shall include information concerning a felony or gross misdemeanor without first making inquiry of the identification section of the Washington state patrol for the purpose of obtaining the most current and complete information available, unless one or more of the following circumstances exists:

(1) The information to be disseminated is needed for a purpose in the administration of criminal justice for which time is of the essence and the identification section is technically or physically incapable of responding within the required time;

(2) The full information requested and to be disseminated relates to specific facts or incidents which are within the direct knowledge of the agency which disseminates the information;

(3) The full information requested and to be disseminated is contained in a criminal history record information summary re-

ceived from the identification section by the agency which is to make the dissemination not more than thirty days preceding the dissemination to be made;

(4) The statute, executive order, court rule, or court order pursuant to which the information is to be disseminated refers solely to information in the files of the agency which makes the dissemination;

(5) The information requested and to be disseminated is for the express purpose of research, evaluative, or statistical activities to be based upon information maintained in the files of the agency or agencies from which the information is directly sought; or

(6) A person who is the subject of the record requests the information and the agency complies with the requirements in RCW 10.97.080 as now or hereafter amended.

Added by Laws 1977, Ex.Sess., ch. 314, § 4. Amended by Laws 1979, Ex.Sess., ch. 36, § 2.

Historical Note

The 1979 amendment deleted "Effective January 1, 1978" preceding "No criminal justice agency" at the beginning of the first and second paragraphs, added the proviso to the first paragraph, and added subsec. (6).

Library References

Criminal Law ⇐1222. C.J.S. Criminal Law § 2008 et seq.

10.97.045 Disposition of criminal charge data to be furnished agency initiating criminal history record and state patrol

Whenever a court or other criminal justice agency reaches a disposition of a criminal proceeding, the court or other criminal justice agency shall furnish the disposition data to the agency initiating the criminal history record for that charge and to the identification section of the Washington state patrol as required under RCW 43.43.745.

Added by Laws 1979, Ex.Sess., ch. 36, § 6.

Library References

Criminal Law ⇐1226(1). C.J.S. Criminal Law § 2008.

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10.97.050 Unrestricted dissemination of certain information—Dissemination of other information to certain persons or for certain purposes—Records of dissemination, contents

(1) Conviction records may be disseminated without restriction.

(2) Any criminal history record information which pertains to an incident for which a person is currently being processed by the criminal justice system, including the entire period of correctional supervision extending through final discharge from parole, when applicable, may be disseminated without restriction.

(3) Criminal history record information which includes nonconviction data may be disseminated by a criminal justice agency to another criminal justice agency for any purpose associated with the administration of criminal justice, or in connection with the employment of the subject of the record by a criminal justice or juvenile justice agency. A criminal justice agency may respond to any inquiry from another criminal justice agency without any obligation to ascertain the purpose for which the information is to be used by the agency making the inquiry.

(4) Criminal history record information which includes nonconviction data may be disseminated by a criminal justice agency to implement a statute, ordinance, executive order, or a court rule, decision, or order which expressly refers to records of arrest, charges, or allegations of criminal conduct or other nonconviction data and authorizes or directs that it be available or accessible for a specific purpose.

(5) Criminal history record information which includes nonconviction data may be disseminated to individuals and agencies pursuant to a contract with a criminal justice agency to provide services related to the administration of criminal justice. Such contract must specifically authorize access to criminal history record information, but need not specifically state that access to nonconviction data is included. The agreement must limit the use of the criminal history record information to stated purposes and insure the confidentiality and security of the information consistent with state law and any applicable federal statutes and regulations.

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(6) Criminal history record information which includes nonconviction data may be disseminated to individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency. Such agreement must authorize the access to nonconviction data, limit the use of that information which identifies specific individuals to research, evaluative, or statistical purposes, and contain provisions giving notice to the person or organization to which the records are disseminated that the use of information obtained therefrom and further dissemination of such information are subject to the provisions of this chapter and applicable federal statutes and regulations, which shall be cited with express reference to the penalties provided for a violation thereof.

(7) Every criminal justice agency that maintains and disseminates criminal history record information must maintain information pertaining to every dissemination of criminal history record information except a dissemination to the effect that the agency has no record concerning an individual. Information pertaining to disseminations shall include:

(a) An indication of to whom (agency or person) criminal history record information was disseminated;

(b) The date on which the information was disseminated;

(c) The individual to whom the information relates; and

(d) A brief description of the information disseminated.

The information pertaining to dissemination required to be maintained shall be retained for a period of not less than one year.

Added by Laws 1977, Ex.Sess., ch. 314, § 5.

Library References

Criminal Law ⇐1222. C.J.S. Criminal Law § 2008 et seq.

10.97.060 Deletion of certain information, conditions

Criminal history record information which consists of nonconviction data only shall be subject to deletion from criminal justice agency files which are available and generally searched for the purpose of responding to inquiries concerning the criminal history of a named or otherwise identified individual when two years or longer have elapsed since the record became nonconviction data as a result of the entry of a disposition favorable to

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the defendant, or upon the passage of three years from the date of arrest or issuance of a citation or warrant for an offense for which a conviction was not obtained unless the defendant is a fugitive, or the case is under active prosecution according to a current certification made by the prosecuting attorney.

Such criminal history record information consisting of non-conviction data shall be deleted upon the request of the person who is the subject of the record: *Provided, however,* That the criminal justice agency maintaining the data may, at its option, refuse to make the deletion if.

(1) The disposition was a deferred prosecution or similar diversion of the alleged offender;

(2) The person who is the subject of the record has had a prior conviction for a felony or gross misdemeanor;

(3) The individual who is the subject of the record has been arrested for or charged with another crime during the intervening period.

Nothing in this chapter is intended to restrict the authority of any court, through appropriate judicial proceedings, to order the modification or deletion of a record in a particular cause or concerning a particular individual or event.

Added by Laws 1977, Ex.Sess., ch. 314, § 6.

Library References

Criminal Law ⇐1222. C.J.S. Criminal Law § 2008 et seq.

10.97.070 Discretionary disclosure of suspect's identity to victim

(1) Criminal justice agencies may, in their discretion, disclose to persons who have suffered physical loss, property damage, or injury compensable through civil action, the identity of persons suspected as being responsible for such loss, damage, or injury together with such information as the agency reasonably believes may be of assistance to the victim in obtaining civil redress. Such disclosure may be made without regard to whether the suspected offender is an adult or a juvenile, whether charges have or have not been filed, or a prosecuting authority has declined to file a charge or a charge has been dismissed.

(2) The disclosure by a criminal justice agency of investigative information pursuant to subsection (1) of this section shall

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not establish a duty to disclose any additional information concerning the same incident or make any subsequent disclosure of investigative information, except to the extent an additional disclosure is compelled by legal process.

Added by Laws 1977, Ex.Sess., ch. 314, § 7.

Library References

Criminal Law ⇐1222. C.J.S. Criminal Law § 2008 et seq.

10.97.080 Inspection of information by subject—Limitations—Rules governing—Challenge of records and correction of information—Dissemination of corrected information

All criminal justice agencies shall permit an individual who is, or who believes that he may be, the subject of a criminal record maintained by that agency, to appear in person during normal business hours of that criminal justice agency and request to see the criminal history record information held by that agency pertaining to the individual. The individual's right to access and review of criminal history record information shall not extend to data contained in intelligence, investigative, or other related files, and shall not be construed to include any information other than that defined as criminal history record information by this chapter.

Every criminal justice agency shall adopt rules and make available forms to facilitate the inspection and review of criminal history record information by the subjects thereof, which rules may include requirements for identification, the establishment of reasonable periods of time to be allowed an individual to examine the record, and for assistance by an individual's counsel, interpreter, or other appropriate persons.

No person shall be allowed to retain or mechanically reproduce any nonconviction data except for the purpose of challenge or correction when the person who is the subject of the record asserts the belief in writing that the information regarding such person is inaccurate or incomplete. The provisions of chapter 42.17 RCW shall not be construed to require or authorize copying of nonconviction data for any other purpose.

The Washington state patrol shall establish rules for the challenge of records which an individual declares to be inaccurate or

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incomplete, and for the resolution of any disputes between individuals and criminal justice agencies pertaining to the accuracy and completeness of criminal history record information. The Washington state patrol shall also adopt rules for the correction of criminal history record information and the dissemination of corrected information to agencies and persons to whom inaccurate or incomplete information was previously disseminated. Such rules may establish time limitations of not less than ninety days upon the requirement for disseminating corrected information.

Added by Laws 1977, Ex.Sess., ch. 314, § 8. Amended by Laws 1979, Ex.Sess., ch. 36, § 3.

Historical Note

The 1979 amendment substituted "Washington state patrol" for "state planning agency" in the last paragraph.

Library References

Criminal Law ⇐1222. C.J.S. Criminal Law § 2008 et seq.

10.97.090 Administration of Act by state patrol—Powers and duties

The Washington state patrol is hereby designated the agency of state government responsible for the administration of the 1977 Washington State Criminal Records Privacy Act.[1] The Washington state patrol may adopt any rules and regulations necessary for the performance of the administrative functions provided for in this chapter.

The Washington state patrol shall have the following specific administrative duties:

(1) To establish by rule and regulation standards for the security of criminal history information systems in order that such systems and the data contained therein be adequately protected from fire, theft, loss, destruction, other physical hazard, or unauthorized access;

(2) To establish by rule and regulation standards for personnel employed by criminal justice of other state and local government agencies in positions with responsibility for maintenance and dissemination of criminal history record information; and

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(3) To contract with the Washington state auditor or other public or private agency, organization, or individual to perform audits of criminal history record information systems.

Added by Laws 1977, Ex.Sess., ch. 314, § 9. Amended by Laws 1979, Ex.Sess., ch. 36, § 4.

[1] This chapter.

Historical Note

The 1979 amendment substituted "Washington state patrol" for "state planning agency" throughout the section.

Library References

Criminal Law ⇐1222. C.J.S. Criminal Law § 2008 et seq.

10.97.100 Fees for dissemination of information

Criminal justice agencies shall be authorized to establish and collect reasonable fees for the dissemination of criminal history record information to agencies and persons other than criminal justice agencies.

Added by Laws 1977, Ex.Sess., ch. 314, § 10.

Library References

Criminal Law ⇐1222. C.J.S. Criminal Law § 2008 et seq.

10.97.110 Action for injunction and damages for violation of chapter—Measure of damages—Action not to affect criminal prosecution

Any person may maintain an action to enjoin a continuance of any act or acts in violation of any of the provisions of this chapter, and if injured thereby, for the recovery of damages and for the recovery of reasonable attorneys' fees. If, in such action, the court shall find that the defendant is violating or has violated any of the provisions of this chapter, it shall enjoin the defendant from a continuance thereof, and it shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in said action shall be entitled to recover from the defendant the amount of the actual damages, if any, sustained by him if actual damages to the plaintiff are alleged and proved. In any suit brought to enjoin a violation of this chapter, the prevailing party may be awarded reasonable attorneys' fees, including fees incurred upon appeal.

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Commencement, pendency, or conclusion of a civil action for injunction or damages shall not affect the liability of a person or agency to criminal prosecution for a violation of this chapter.

Added by Laws 1977, Ex.Sess., ch. 314, § 11. Amended by Laws 1979, Ex.Sess., ch. 36, § 5.

Historical Note

The 1979 amendment substituted "of" for "or", in the last sentence, following "shall not affect the liability".

Library References

Injunction 96.
Torts ⇐8.5.
C.J.S. Injunctions § 145.
C.J.S. Right of Privacy § 1 et seq.

10.97.120 Penalty for violation of chapter—Criminal prosecution not to affect civil action

Violation of the provisions of this chapter shall constitute a misdemeanor, and any person whether as principal, agent, officer, or director for himself or for another person, or for any firm or corporation, public or private, or any municipality who or which shall violate any of the provisions of this chapter shall be guilty of a misdemeanor for each single violation. Any criminal prosecution shall not affect the right of any person to bring a civil action as authorized by this chapter or otherwise authorized by law.

Enacted by Laws 1977, Ex.Sess., ch. 314, § 12.

Library References

Action ⇐35.
Officers ⇐121.
C.J.S. Actions § 6.
C.J.S. Officers and Public Employees §§ 255 to 259.

* * * * *

43.43.700 Identification section. Established—Powers and duties generally

There is hereby established within the Washington state patrol a section on identification hereafter referred to as the section.

In order to aid the administration of justice the section shall install systems for the identification of individuals, including the fingerprint system and such other systems as the chief deems necessary. The section shall keep a complete record and index of all information received in convenient form for consultation and comparison.

The section shall obtain from whatever source available and file for record the fingerprints, palmprints, photographs, or such other identification data as it deems necessary, of persons who have been or shall hereafter be lawfully arrested and charged with, or convicted of any criminal offense. The section may obtain like information concerning persons arrested for or convicted of crimes under the laws of another state or government. [Added by Laws 1st Ex Sess 1972 ch 152 § 1, effective February 25, 1972.]

CJS States §§ 52, 58, 60 et seq., 66.
Key Number Digests: States ⇐45, 67, 73.

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43.43.705 Receipt of data—Furnishing of information—Procedure —Definitions—Appeals

Upon the receipt of identification data from criminal justice agencies within this state, the section shall immediately cause the files to be examined and upon request shall promptly return to the contributor of such data a transcript of the record of previous arrests and dispositions of the persons described in the data submitted.

Upon application, the section shall furnish to criminal justice agencies a transcript of the criminal offender record information available pertaining to any person of whom the section has a record.

For the purposes of RCW 43.43.700 through 43.43.800 the following words and phrases shall have the following meanings:

"Criminal offender record information" includes, and shall be restricted to identifying data and public record information recorded as the result of an arrest or other initiation of criminal proceedings and the consequent proceedings related thereto. "Criminal offender record information" shall not include intelligence, analytical, or investigative reports and files.

"Criminal justice agencies" are those public agencies within or outside the state which perform, as a principal function, activities directly relating to the apprehension, prosecution, adjudication or rehabilitation of criminal offenders.

Applications for information shall be by a data communications network used exclusively by criminal justice agencies or in writing and information applied for shall be used solely in the due administration of the criminal laws or for the purposes enumerated in RCW 43.43.760(3).

The section may refuse to furnish any information pertaining to the identification or history of any person or persons of whom it has a record, or other information in its files and records, to any applicant if the chief determines that the applicant has previously misused information furnished to such applicant by the section or the chief believes that the applicant will not use the information requested solely for the purpose of due administration of the criminal laws or for the purposes enumerated in RCW 43.43.760(3). The applicant may appeal such determination and denial of information to the advisory council created in RCW 43.43.785 and the council may direct that the section furnish such information to the applicant. [Added by Laws 1st Ex Sess 1972 ch 152 § 2, effective February 25, 1972; Amended by Laws 1st Ex Sess 1977 ch 314 § 14.]

66 Am Jur 2d Records and Recording Laws §§ 13 et seq., 23-25.
CJS States §§ 60 et seq.
Key Number Digests: States ⟸73.

43.43.710 Availability of information

Information contained in the files and records of the section relative to the commission of any crime by any person shall be considered privileged and shall not be made public or disclosed for any personal purpose or in any civil court proceedings except upon a written order of the judge of a court wherein such civil proceedings are had. All information contained in the files of the section relative to criminal records and personal histories of persons arrested for the commission of a crime shall be available to all criminal justice agencies and, for the sole purpose of investigating the cause of fires under RCW 48.48.060(2) where the cause is suspected to be arson, to the state fire marshal, upon the filing of an application as provided in RCW 43.43.705.

Although no application for information has been made to the section as provided in RCW 43.43.705, the section may transmit such information in the

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chief's discretion, to such agencies as are authorized by RCW 43.43.705 to make application for it.

[Added by Laws 1st Ex Sess 1972 ch 152 § 3, effective February 25, 1972; Amended by Laws 1st Ex Sess 1977 ch 30 § 1, ch 314 § 15; Laws 1st Ex Sess 1979 ch 36 § 7.]

CJS Records §§ 35 et seq.
Key Number Digests: Records ⇐14.

43.43.715 Cooperation with other criminal justice agencies

The section shall, consistent with the procedures set forth in *this 1972 act, cooperate with all other criminal justice agencies, within or without the state, in an exchange of information regarding convicted criminals and those suspected of or wanted for the commission of crimes, to the end that proper identification may rapidly be made and the ends of justice served. [Added by Laws 1st Ex Sess 1972 ch 152 § 4, effective February 25, 1972.]

* Reviser's note: "this 1972 act" [1972 1st ex.s. c 152], see note following RCW 43.43.705.

66 Am Jur 2d Records and Recording Laws §§ 13 et seq., 23-25.
CJS States §§ 60 et seq.
Key Number Digests: States ⇐73.

43.43.720 Local identification and record systems—Assistance

At the request of any criminal justice agency within this state, the section may assist such agency in the establishment of local identification and records systems. [Added by Laws 1st Ex Sess 1972 ch 152 § 5, effective February 25, 1972.]

43.43.725 Records as evidence

Any copy of a criminal offender record, photograph, fingerprint, or other paper or document in the files of the section, certified by the chief or his designee to be a true and complete copy of the original or of information on file with the section, shall be admissible in evidence in any court of this state pursuant to the provisions of RCW 5.44.040. [Added by Laws 1st Ex Sess 1972 ch 152 § 6, effective February 25, 1972.]

30 Am Jur 2d Evidence §§ 963, 963, 991 et seq.
CJS Criminal Law § 844.
Key Number Digests: Criminal Law ⇐430.

43.43.730 Records—Inspection—Requests for purge or modification —Appeals

(1) Any individual shall have the right to inspect criminal offender record information on file with the section which refers to him. If an individual believes such information to be inaccurate or incomplete, he may request the section to purge, modify or supplement it and to advise such persons or agencies who have received his record and whom the individual designates to modify it accordingly. Should the section decline to so act, or should the individual believe the section's decision to be otherwise unsatisfactory, the individual may appeal such decision to the superior court in the county in which he is resident, or the county from which the disputed record emanated or Thurston county. The court shall in such case conduct a de novo hearing, and may order such relief as it finds to be just and equitable.

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(2) The section may prescribe reasonable hours and a place for inspection, and may impose such additional restrictions, including fingerprinting, as are reasonably necessary both to assure the record's security and to verify the identities of those who seek to inspect them: *Provided*, That the section may charge a reasonable fee for fingerprinting. [Added by Laws 1st Ex Sess 1972 ch 152 § 7, effective February 25, 1972; Amended by Laws 1st Ex Sess 1977 ch 314 § 16.]

66 Am Jur 2d Records and Recording Laws § 14.
CJS Records §§ 73, 75, 76.
Key Number Digests: Records ⇐23.

43.43.735 Photographing and fingerprinting—Powers and duties of law enforcement agencies—Other data

(1) It shall be the duty of the sheriff or director of public safety of every county, and the chief of police of every city or town, and of every chief officer of other law enforcement agencies duly operating within this state, to cause the photographing and fingerprinting of all persons lawfully arrested for the commission of any criminal offense constituting a felony or gross misdemeanor: *Provided*, That an exception may be made when the arrest is for a violation punishable as a gross misdemeanor and the arrested person is not taken into custody.

(2) It shall be the right, but not the duty, of the sheriff or director of public safety of every county, and the chief of police of every city or town, and every chief officer of other law enforcement agencies operating within this state to photograph and record the fingerprints of all persons lawfully arrested.

(3) Such sheriffs, directors of public safety, chiefs of police, and other chief law enforcement officers, may record, in addition to photographs and fingerprints, the palmprints, soleprints, toe prints, or any other identification data of all persons lawfully arrested for the commission of any criminal offense, when in the discretion of such law enforcement officers it is necessary for proper identification of the arrested person or the investigation of the crime with which he is charged. [Added by Laws 1st Ex Sess 1972 ch 152 § 8, effective February 25, 1972.]

21 Am Jur 2d Criminal Law § 369.
CJS Criminal Law §§ 2008 et seq.
Key Number Digests: Criminal Law ⇐1222.

43.43.740 Furnishing of data to section—Time limitation—Retention of data

Except as provided in RCW 43.43.755 relating to the fingerprinting of juveniles:

(1) It shall be the duty of the sheriff or director of public safety of every county, and the chief of police of every city or town, and of every chief officer of other law enforcement agencies duly operating within this state to furnish within seventy-two hours from the time of arrest to the section the required sets of fingerprints together with other identifying data as may be prescribed by the chief, of any person lawfully arrested, fingerprinted, and photographed pursuant to 43.43.735.

(2) Law enforcement agencies may retain and file copies of the fingerprints, photographs and other identifying data and information obtained pursuant to RCW 43.43.735. Said records shall remain in the possession of the law enforcement agency as part of the identification record and are not returnable to the subjects thereof. [Added by Laws 1st Ex Sess 1972 ch 152 § 9, effective February 25, 1972.]

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21 Am Jur 2d Criminal Law § 369.
CJB Criminal Law §§ 2004, 2006.
Key Number Digests: Criminal Law ⇐1221.

43.43.745 Convicted persons, fingerprinting required, records—Furloughs, information to section, notice to local agencies —Arrests, disposition information—Convicts, information to section, notice to local agencies

(1) It shall be the duty of the sheriff or director of public safety of every county, of the chief of police of each city or town, or of every chief officer of other law enforcement agencies operating within this state, to record the fingerprints of all persons held in or remanded to their custody when convicted of any crime as provided for in RCW 43.43.735 for which the penalty of imprisonment might be imposed and to disseminate and file such fingerprints in the same manner as those recorded upon arrest pursuant to RCW 43.43.735 and 43.43.740.

(2) Every time the secretary authorizes a furlough as provided for in RCW 72.66.012 the department of social and health services shall notify, forty-eight hours prior to the beginning of such furlough, the section that the named prisoner has been granted a furlough, the place to which furloughed, and the dates and times during which the prisoner will be on furlough status. In the case of an emergency furlough the forty-eight hour time period shall not be required but notification shall be made as promptly as possible and before the prisoner is released on furlough. Upon receipt of furlough information pursuant to the provisions of this subsection the section shall notify the sheriff or director of public safety of the county to which the prisoner is being furloughed, the nearest attachment of the Washington state patrol in the county wherein the furloughed prisoner shall be residing and such other criminal justice agencies as the section may determine should be so notified.

(3) Disposition of the charge for which the arrest was made shall be reported to the section at whatever stage in the proceedings a final disposition occurs by the arresting law enforcement agency, county prosecutor, city attorney, or court having jurisdiction over the offense: *Provided*, That the chief shall promulgate rules pursuant to chapter 34.04 RCW to carry out the provisions of this subsection.

(4) Whenever a person serving a sentence for a term of confinement in a state correctional facility for convicted felons, pursuant to court commitment, is released on an order of the state board of prison terms and paroles, or is discharged from custody on expiration of sentence, the department of social and health services shall promptly notify the section that the named person has been released or discharged, the place to which such person has been released or discharged, and the conditions of his release or discharge, and shall additionally notify the section of change in residence or conditions of release or discharge of persons on active parole supervision, and shall notify the section when persons are discharged from active parole supervision.

No city, town, county, or local law enforcement authority or other agency thereof may require that a convicted felon entering, sojourning, visiting, in transit, or residing in such city, town, county, or local area report or make himself known as a convicted felon or make application for and/or carry on his person a felon identification card or other registration document. Nothing herein shall, however, be construed to prevent any local law enforcement authority from recording the residency and other information concerning any convicted felon or other person convicted of a criminal offense

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when such information is obtained from a source other than from such requirement which source may include any officer or other agency or subdivision of the state. [Added by Laws 1st Ex Sess 1972 ch 152 § 10, effective February 25, 1972; Amended by Laws 1973 ch 20 § 1.]

Construction—Prior rules and regulations—1973 c 20: See note following RCW 72.66.010.

21 Am Jur 2d Criminal Law § 369.
CJS Pardons §§ 1, 15.
Key Number Digests: Pardon and Parole ⇐13.

43.43.750 Use of force to obtain identification information—Liability

In exercising their duties and authority under RCW 43.43.735 and 43.43.740, the sheriffs, directors of public safety, chiefs of police, and other chief law enforcement officers, may, consistent with constitutional and legal requirements, use such reasonable force as is necessary to compel an unwilling person to submit to being photographed, or fingerprinted, or to submit to any other identification procedure, except interrogation, which will result in obtaining physical evidence serving to identify such person. No one having the custody of any person subject to the identification procedures provided for in* this act, and no one acting in his aid or under his direction, and no one concerned in such publication as is provided for in RCW 43.43.740, shall incur any liability, civil or criminal, for anything lawfully done in the exercise of the provisions of *this act. [Added by Laws 1st Ex Sess 1972 ch 152 § 11, effective February 25, 1972.]

* Reviser's note: "this act" [1972 1st ex.s. c 152], see note following RCW 43.43.705.

21 Am Jur 2d Criminal Law § 369.
CJS Municipal Corporations § 565, Sheriffs and Constables §§ 52 et seq.
Key Number Digests: Municipal Corporations ⇐182, Sheriffs and Constables ⇐97.

43.43.755 Persons under age of eighteen years

(1) The recording of fingerprints, photographs and other identification data of any person under the age of eighteen shall be accomplished pursuant to Title 13 RCW as now or hereafter revised or supplemented.

(2) For the purpose of *this act, any person eighteen years or older shall be considered an adult when charged with the commission of any criminal offense, and his records shall not be subject to the restrictions in subsection (1) of this section. [Added by Laws 1st Ex Sess 1972 ch 152 § 12, effective February 25, 1972.]

* Reviser's note: "this act" [1972 1st ex.s. c 152], see note following RCW 43.43.705.

Am Jur 2d Criminal Law § 369, Juvenile Courts and Delinquent and Dependent Children § 26.
CJS Infants §§ 93 et seq.
Key Number Digests: Infants ⇐16 et seq.

43.43.760 Personal identification—Requests—Purpose—Applicants—Fee

(1) Whenever a resident of this state appears before any law enforcement agency and requests an impression of his fingerprints to be made, such agency may comply with his request and make the required copies of the impressions on forms marked "Personal Identification". The required

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copies shall be forwarded to the section and marked "for personal identification only".

(2) The section shall accept and file such fingerprints submitted voluntarily by such resident, for the purpose of securing a more certain and easy identification in case of death, injury, loss of memory, or other similar circumstances. Upon the request of such person, the section shall return his identification data.

(3) Whenever any person is an applicant for appointment to any position or is an applicant for employment or is an applicant for a license to be issued by any governmental agency, and the law or a regulation of such governmental agency requires that the applicant be of good moral character or not have been convicted of a crime, or is an applicant for appointment to or employment with a criminal justice agency, the applicant may request any law enforcement agency to make an impression of his fingerprints to be submitted to the section. The law enforcement agency may comply with such request and make copies of the impressions on forms marked "applicant", and submit such copies to the section.

The section shall accept such fingerprints and shall cause its files to be examined and shall promptly send to the appointing authority, employer, or licensing authority indicated on the form of application, a transcript of the record of previous crimes committed by the person described on the data submitted, or if there is no record of his commission of any crimes, a statement to that effect.

Any law enforcement agency may charge a fee not to exceed five dollars for the purpose of taking fingerprint impressions or searching its files of identification for noncriminal purposes. [Added by Laws 1st Ex Sess 1972 ch 152 § 13, effective February 25, 1972.]

43.43.765 Reports of transfer, release or changes as to committed or imprisoned persons—Records

The principal officers of the jails, correctional institutions, state mental institutions and all places of detention to which a person is committed under RCW 10.76 or RCW 71.06 for treatment or under a sentence of imprisonment for any crime as provided for in RCW 43.43.735 shall within seventy-two hours, report to the section, any inter-institutional transfer, release or change of release status of any person held in custody pursuant to the rules promulgated by the chief.

The principal officers of all state mental institutions to which a person has been committed under RCW 10.76 or RCW 71.06 shall keep a record of the photographs, description, fingerprints, and other identification data as may be obtainable from the appropriate criminal justice agency. [Added by Laws 1st Ex Sess 1972 ch 152 § 14, effective February 25, 1972.]

CJS Insane Persons § 130, Prisons § 5.
Key Number Digests: Mental Health ⇐436, Prisons ⇐4.

43.43.770 Unidentified deceased persons

It shall be the duty of the sheriff or director of public safety of every county, or the chief of police of every city or town, or the chief officer of other law enforcement agencies operating within this state, coroners or medical examiners, to record whenever possible the fingerprints and such other identification data as may be useful to establish identity, of all unidentified dead bodies found within their respective jurisdictions, and to furnish to

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the section all data so obtained. The section shall search its files and otherwise make a reasonable effort to determine the identity of the deceased and notify the contributing agency of the finding.

In all cases where there is found to exist a criminal record for the deceased, the section shall notify the federal bureau of investigation and each criminal justice agency, within or outside the state in whose jurisdiction the decedent has been arrested, of the date and place of death of decedent. [Added by Laws 1st Ex Sess 1972 ch 152 § 15, effective February 25, 1972.]

CJS Coroners § 12, Municipal Corporations § 565, Sheriffs and Constables § 42.
Key Number Digests: Coroners ⇐8, Municipal Corporations ⇐182, Sheriffs and Constables ⇐86.

43.43.775 Interagency contracts

The legislative authority of any county, city or town may authorize its sheriff, director of public safety or chief of police to enter into any contract with another public agency which is necessary to carry out the provisions of *this act. [Added by Laws 1st Ex Sess 1972 ch 152 § 16, effective February 25, 1972.]

* Reviser's note: "this act" [1972 1st ex.s. c 152], see note following RCW 43.43.705.

CJS Counties §§ 175, 177, Municipal Corporations §§ 982 et seq.
Key Number Digests: Counties ⇐114, Municipal Corporations ⇐230.

43.43.780 Transfer of records, data, equipment to section

All fingerprint cards, photographs, file cabinets, equipment, and other records collected and filed by the bureau of criminal identification, are now in the department of social and health services shall be transferrd to the Washington state patrol for use by the section on identification created by *this act. [Added by Laws 1st Ex Sess 1972 ch 152 § 17, effective February 25, 1972.]

* Reviser's note: "this act" [1972 1st ex.s. c 152], see note following RCW 43.43.705.

CJS Records §§ 34, 40.
Key Number Digests: Records ⇐13.

43.43.785 Criminal justice services—Consolidation—Establishment of program

The legislature finds that there is a need for the Washington state patrol to establish a program which will consolidate existing programs of criminal justice services within its jurisdiction so that such services may be more effectively utilized by the criminal justice agencies of this state. The chief, with the advice of the state advisory council on criminal justice services created in RCW 43.43.790, shall establish such a program which shall include but not be limited to the identification section, all auxiliary systems including the Washington crime information center and the teletypewriter communications network, the drug control assistance unit, and any other services the chief deems necessary which are not directly related to traffic control. [Added by Laws 1st Ex Sess 1972 ch 152 § 18, effective February 25, 1972.]

CJS States §§ 58, 66.
Key Number Digests: States ⇐67.

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43.43.790 Criminal justice services—Advisory council—Created—Membership—Terms—Vacancies

There is hereby created the Washington state advisory council on criminal justice services. The advisory council shall consist of eleven members, nine to be appointed by the governor. The chief of the Washington state patrol shall be a member and shall act as chairman and the secretary of the department of social and health services or his designee shall be an ex officio member.

The members of the initial council shall be appointed within thirty days of the effective date of this act. Of the members of the initial council, three shall be appointed for terms ending June 30, 1976, three shall be appointed for terms ending June 30, 1975 and three shall be appointed for terms ending June 30, 1973. Thereafter, each member of the council shall be appointed for a term of four years. Vacancies shall be filled within ninety days for the remainder of the unexpired term by appointment of the governor in the same manner as the original appointments. Each member of the council shall continue in office until his successor is appointed. [Added by Laws 1st Ex Sess 1972 ch 152 § 19, effective February 25, 1972.]

Reviser's note: The effective date of 1972 1st ex.s. c 152 was February 25, 1972.

Am Jur 2d Administrative Law §§ 23 et seq., 60 et seq., Public Officers and Employees §§ 127 et seq.

CJS States §§ 49, 52, 66, 72, 77.
Key Number Digests: States ⇐45, 51.

43.43.795 Criminal justice services—Advisory council—Meetings

The council shall meet not less than quarterly at a date and place of its choice, and at such other times as shall be designated by a chairman or upon the written request of a majority of the council. [Added by Laws 1st Ex Sess 1972 ch 152 § 20, effective February 25, 1972.]

2 Am Jur 2d Administrative Law §§ 227-229.

43.43.800 Criminal justice services—Advisory council—Duties—Technical advisory committees

The advisory council shall review the provisions of RCW 43.43.700 through 43.43.785 and the administration thereof and shall consult with and advise the chief of the state patrol on matters pertaining to the policies of criminal justice services program.

The council shall appoint technical advisory committees comprised of members of criminal justice agencies having demonstrated technical expertise in the various fields of specialty within the program. [Added by Laws 1st Ex Sess 1972 ch 152 § 21, effective February 25, 1972.]

1 Am Jur 2d Administrative Law § 183.
CJS States §§ 60 et seq.
Key Number Digests: States ⇐73.

43.43.810 Obtaining information by false pretenses—Unauthorized use of information—Falsifying records—Penalty

Any person who wilfully requests, obtains or seeks to obtain criminal offender record information under false pretenses, or who wilfully communicates or seeks to communicate criminal offender record information to any agency or person except in accordance with this act, or any member, officer, employee or agent of the section, the council or any participating agency, who wilfully falsifies criminal offender record information, or any records relating thereto, shall for each such offense be guilty of a misdemeanor. [Added by

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Laws 1st Ex Sess 1972 ch 152 § 23, effective February 25, 1972; Amended by Laws 1st Ex Sess 1977 ch 314 § 17.]

Reviser's note: "this act" [1972 1st ex.s. c 152], see note following RCW 43.43.705.

CJS False Pretenses §§ 6 et seq., 56.
Key Number Digests: False Pretenses ⇐4, 54.

43.43.820 Stale records

Stale records shall be destroyed in a manner to be prescribed by the chief. [Added by Laws 1st Ex Sess 1972 ch 152 § 25, effective February 25, 1972.]

CJS Records §§ 73, 75, 76.
Key Number Digests: Records ⇐22.

43.43.850 Crime intelligence unit—Created

There is hereby created in the Washington state patrol an organized crime intelligence unit which shall be under the direction of the chief of the Washington state patrol. [Added by Laws 1st Ex Sess 1973 ch 202 § 1, effective April 26, 1973.]

CJS States §§ 52, 66.
Key Number Digests: States ⇐45.

43.43.852 "Organized crime" defined

For the purposes of RCW 43.43.850 through 43.43.864 "organized crime" means those activities which are conducted and carried on by members of an organized, disciplined association, engaged in supplying illegal goods and services and/or engaged in criminal activities in contravention of the laws of this state or of the United States. [Added by Laws 1st Ex Sess 1973 ch 202 § 2, effective April 26, 1973.]

43.43.854 Powers and duties of crime intelligence unit

The organized crime intelligence unit shall collect, evaluate, collate, and analyze data and specific investigative information concerning the existence, structure, activities and operations of organized crime and the participants involved therein; coordinate such intelligence data into a centralized system of intelligence information; furnish and exchange pertinent intelligence data with law enforcement agencies and prosecutors with such security and confidentiality as the chief of the Washington state patrol may determine; develop intelligence data concerning the infiltration of organized crime into legitimate businesses within the state of Washington and furnish pertinent intelligence information thereon to law enforcement agencies and prosecutors in affected jurisdictions; and may assist law enforcement agencies and prosecutors in developing evidence for purposes of criminal prosecution of organized crime activities upon request. [Added by Laws 1st Ex Sess 1973 ch 202 § 3, effective April 26, 1973.]

CJS States §§ 58, 66, 60 et seq.
Key Number Digests: States ⇐67, 73.

43.43.856 Divulging investigative information prohibited—Confidentiality—Security of records and files

(1) On and after April 26, 1973 it shall be unlawful for any person to divulge specific investigative information pertaining to activities related to organized crime which he has obtained by reason of public employment with the state of Washington or its political subdivisions unless such person is

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authorized or required to do so by operation of state or federal law. Any person violating this subsection shall be guilty of a felony.

(2) Except as provided in RCW 43.43.854, or pursuant to the rules of the supreme court of Washington, all of the information and data collected and processed by the organized crime intelligence unit shall be confidential and not subject to examination or publication pursuant to chapter 42.17 RCW (Initiative Measure No. 276).

(3) The chief of the Washington state patrol shall prescribe such standards and procedures relating to the security of the records and files of the organized crime intelligence unit, as he deems to be in the public interest with the advice of the governor and the board. [Added by Laws 1st Ex Sess 1973 ch 202 § 4, effective April 26, 1973.]

CJS Records §§ 35 et seq.

Ops Atty Gen 1974 No. 1 (permitted divulging of specific investigative information regarding organized crime activities to nonlaw enforcement agencies incidental to performance of official functions and duties).

Key Number Digests: Records 14.

43.43.858 Organized crime advisory board—Created—Membership—Meetings—Travel expenses

There is hereby created the organized crime advisory board of the state of Washington. The board shall consist of thirteen voting and two nonvoting members.

The lieutenant governor shall appoint four members of the senate judiciary committee to the board, no more than two of whom shall be from the same political party.

The governor shall appoint five members to the board. Two members shall be county prosecuting attorneys and shall be appointed from a list of four county prosecutors agreed upon and submitted to the governor by the elected county prosecutors. One member shall be a municipal police chief, and one member shall be a county sheriff, both of whom shall be appointed from a list of three police chiefs and three sheriffs agreed upon and submitted to the governor by the association of sheriffs and police chiefs (RCW 36.28A.010). One member shall be a retired judge of a court of record.

The United States attorneys for the western and eastern districts of Washington shall be requested to serve on the board as nonvoting members and shall not be eligible to serve as chairperson.

The speaker of the house shall appoint four members of the house judiciary committee to the board, no more than two of whom shall be from the same political party.

The members of the board shall be qualified on the basis of knowledge and experience in matters relating to crime prevention and security or with such other abilities as may be expected to contribute to the effective performance of the board's duties. The members of the board shall meet with the chief of the Washington state patrol at least four times a year to perform the duties enumerated in RCW 43.43.862 and to discuss any other matters related to organized crime. Additional meetings of the board may be convened at the call of the chairperson or by a majority of the members. The board shall elect its own chairperson from among its members. Legislative members shall receive reimbursement for travel expenses incurred in the performance of their duties in accordance with RCW 44.04.120 as now existing or hereafter amended, and the other members in accordance with RCW 43.03.050 and 43.03.060, as now existing or hereafter amended.

[Added by Laws 1st Ex Sess 1973 ch 202 § 5, effective April 26, 1973; Amended by Laws 2nd Ex Sess 1975–76 ch 34 § 115, effective July 1, 1976; Laws 1980 ch 146 § 14.]

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Effective date—Severability—1975-76 2nd ex.s. c 34: See notes following RCW 2.08.115.

Severability—1980 c 146: See RCWA 10.29.900.

CJS States §§ 53, 66.
Key Number Digests: States ⇐45.

43.43.860 Organized crime advisory board—Terms of members

The term of each legislative member shall be two years and shall be conditioned upon such member retaining membership on the committee on which he was serving at the time of appointment and retaining membership in the same political party of which he was a member at the time of appointment.

The term of each nonlegislative member shall be two years and shall be conditioned upon such member retaining the official position from which he was appointed.

[Added by Laws 1st Ex Sess 1973 ch 202 § 6, effective April 26, 1973; Amended by Laws 1980 ch 146 § 15.]

Severability—1980 c 146: See RCWA 10.29.900.

43.43.862 Organized crime intelligence advisory board—Powers and duties

The board shall:

(1) Advise the governor on the objectives, conduct, management, and coordination of the various activities encompassing the overall state-wide organized crime intelligence effort;

(2) Conduct a continuing review and assessment of organized crime and related activities in which the organized crime intelligence unit of the Washington state patrol is engaged;

(3) Receive, consider and take appropriate action with respect to matters related to the board by the organized crime intelligence unit of the Washington state patrol in which the support of the board will further the effectiveness of the state-wide organized crime intelligence effort; and

(4) Report to the governor concerning the board's findings and appraisals, and make appropriate recommendations for actions to achieve increased effectiveness of the state's organized crime intelligence effort in meeting state and national organized crime intelligence needs. [Added by Laws 1st Ex Sess 1973 ch 202 § 7, effective April 26, 1973.]

CJS States §§ 53, 66, 60 et seq.
Key Number Digests: States ⇐67, 73.

43.43.864 Information to be furnished board—Security—Confidentiality

In order to facilitate performance of the board's functions, the chief of the Washington state patrol shall make available to the board all information with respect to organized crime and related matters which the board may require for the purpose of carrying out its responsibilities to the governor in accordance with the provisions of RCW 43.43.850 through 43.43.864. Such information made available to the board shall be given all necessary security protection in accordance with the terms and provisions of applicable laws and regulations and shall not be revealed or divulged publicly or privately by members of the board. [Added by Laws 1st Ex Sess 1973 ch 202 § 8, effective April 26, 1973.]

CJS Records §§ 35 et seq.
Key Number Digests: Records ⇐14.

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PUBLIC RECORDS

42.17.250 Duty to publish procedures

(1) Each state agency shall separately state and currently publish in the Washington Administrative Code and each local agency shall prominently display and make available for inspection and copying at the central office of such local agency, for guidance of the public:

(a) descriptions of its central and field organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain copies of agency decisions;

(b) statements of the general course and method by which its operations are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) rules of procedure;

(d) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(e) each amendment or revision to, or repeal of any of the foregoing.

(2) Except to the extent that he has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published or displayed and not so published or displayed. [Enacted Laws 1973 ch 1 § 25, effective January 1, 1973 (Initiative Measure No. 276 § 25).]

CJS Public Administration Bodies and Procedure §§ 48 et seq.
Key Number Digests: Administrative Law and Procedure ⇐301.

Ops Atty Gen 1980 LO No. 14 (it is no longer a function of the secretary of state's office to collect, sort, or systematize statistics relating to agriculture, immigration, labor, manufacturing, mining, and other related subjects in order to prepare and publish either a biennial statistical report to the legislature or a comprehensive report aimed generally at attracting tourists or business activities to the state; however, the secretary of state, as ex-officio commissioner of statistics, may continue to seek and collect such statistics for whatever legitimate public purpose, in unpublished form, they serve; and, so long as he does not do so for the purpose of publication at state expense, he may also prepare tables, with narrative abstracts, of such statistics to the extent that the preparation of such tables and narrative abstracts is reasonably necessary in order to effectuate the legislative public purpose for which the statistics have been collected; however, the cost must be less than $3,000).

County assessor, who had utilized leases of comparable lands to establish net cash rental for certain farm and agricultural lands which had been designated as "open spaces", could be required to permit inspection of contents of such leases without infringing upon rights of privacy of lessors and lessees or a vital governmental interest as those terms are employed in Public Disclosure Act, RCWA 42.17.250. Van Buren v Miller (1979) 22 Wn App 836, 592 P2d 671.

42.17.260 Documents and indexes to be made public

(1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records. To the extent required to prevent an unreasonable invasion of personal privacy, an agency shall delete identifying details when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

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(2) Each agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(3) An agency need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:

(a) Issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and

(b) Make available for public inspection and copying all indexes maintained for agency use.

(4) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if—

(a) It has been indexed in an index available to the public; or

(b) Parties affected have timely notice (actual or constructive) of the terms thereof.

(5) This chapter shall not be construed as giving authority to any agency to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies shall not do so unless specifically authorized or directed by law: *Provided, however,* That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor: *Provided further,* That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter 34.04 RCW. [Enacted Laws 1973 ch 1 § 26, effective January 1, 1973 (Initiative Measure No. 276 § 26); Amended by Laws 1st Ex Sess 1975 ch 294 § 14, effective July 2, 1975.]

CJS Records §§ 35 et seq.

11 Gonzaga LR 13 (Washington's new public records disclosure act: freedom of information in municipal labor law).

Ops Atty Gen 1975 No. 15 (access to lists of individuals under statute).

Ops Atty Gen 1980 No. 1 (except where prohibited by RCWA 42.17.260(5), inspection and copying of an assessor's property tax assessment roll and supporting materials must be allowed unless the specific exemptions covering taxpayer information, as set forth in RCW 42.17.310(1)(c) and RCWA 84.40.020, are applicable in a given case).

Ops Atty Gen 1980 No. 1 (real property assessment rolls prepared pursuant to RCWA 84.40.020 and .160 are lists of taxable property and not individuals; therefore, their disclosure is not prohibited by RCWA 42.17.260(5) even for a commercial purpose; whether this is also true of personal property assessment rolls will depend upon their actual form).

Key Number Digests: Records ⇐14.

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Where employment applications asked questions that were phrased to elicit most private and confidential matters pertaining to life of applicant, and public disclosure would or could be highly offensive to the applicants, and where state human rights commission had not delineated what questions and answers it believed were not protected by right of privacy, trial judge's order upholding subpoena duces tecum rights of commission but directing commission to delete various items of personal information before filing applications as public records was reasonable. Washington State Human Rights Commission v City of Seattle (1980) 25 Wn App 364, 607 P2d 332.

42.17.270 Facilities for copying—Availability of public records

Public records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to any person. Agency facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency. Agencies shall honor requests received by mail for identifiable public records unless exempted by provisions of this chapter. [Enacted Laws 1973 ch 1 § 27, effective January 1, 1973 (Initiative Measure No. 276 § 27); Amended by Laws 1st Ex Sess 1975 ch 294 § 15, effective July 2, 1975.]

CJS Records §§ 35 et seq.
Key Number Digests: Records ⇐14.

Under the public disclosure act (RCWA 42.17), administrative inconvenience and expense, or the fact that particular information is available in another record, affects only the procedural aspects of disclosure, not its scope. Hearst Corp. v Hoppe (1978) 90 Wn 2d 123, 580 P2d 246.

State transportation commission's refusal to disclose plans and specifications of one competitor to another in connection with award of ferry construction contract was not arbitrary and capricious where foreign shipbuilder made no allegation that commission failed to give identical information to both competitors, where foreign shipbuilder obtained access to plans and specifications under court order and took full advantage of that access, and where it demonstrated no prejudice from commission's refusal to allow it to review plans and specifications earlier. Equitable Shipyards, Inc. v State By and Through Dept. of Transp. (1980) 93 Wn 2d 465, 611 P2d 396.

42.17.280 Times for inspection and copying

Public records shall be available for inspection and copying during the customary office hours of the agency: *Provided*, that if the agency does not have customary office hours of at least thirty hours per week, the public records shall be available from nine o'clock a. m. to noon and from one o'clock p. m. to four o'clock p. m. Monday through Friday, excluding legal holidays, unless the person making the request and the agency or its representative agree on a different time. [Enacted Laws 1973 ch 1 § 28, effective January 1, 1973 (Initiative Measure No. 276 § 28).]

CJS Records §§ 35 et seq.
Key Number Digests: Records ⇐14.

42.17.290 Protection of public records—Public access

Agencies shall adopt and enforce reasonable rules and regulations, consonant with the intent of this chapter to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency. Such rules and regulations shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information. Nothing in this section shall relieve agencies from honoring requests received by mail for copies of identifiable public records. [Enacted Laws 1973 ch 1 § 29, effective January 1, 1973 (Initiative Measure No. 276 § 29); Amended by Laws 1st Ex Sess 1975 ch 294 § 16, effective July 2, 1975.]

CJS Records §§ 35 et seq.
Key Number Digests: Records ⇐14.

Under the public disclosure act (RCWA 42.17), administrative inconvenience and expense, or the fact that particular information is available in another record, affects only the procedural aspects of disclosure, not its scope. Hearst Corp. v Hoppe (1978) 90 Wn 2d 123, 580 P2d 246.

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42.17.300 Charges for copying

No fee shall be charged for the inspection of public records. Agencies may impose a reasonable charge for providing copies of public records and for the use by any person of agency equipment to copy public records, which charges shall not exceed the amount necessary to reimburse the agency for its actual costs incident to such copying. [Enacted Laws 1973 ch 1 § 30, effective January 1, 1973 (Initiative Measure No. 276 § 30).]

CJS Records §§ 38, 40.
Key Number Digests: Records ⇐15.

42.17.310 Certain personal and other records exempt

(1) The following shall be exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, welfare recipients, prisoners, probationers, or parolees.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would violate the taxpayer's right to privacy or would result in unfair competitive disadvantage to such taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property: *Provided*, That if at the time the complaint is filed the complainant indicates a desire for disclosure or nondisclosure, such desire shall govern: *Provided, further*, That all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale, is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(2) The exemptions of this section shall be inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption shall be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

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(3) Inspection or copying of any specific records, exempt under the provisions of this section, may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records, is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld. [Enacted Laws 1973 ch 1 § 31, effective January 1, 1973 (Initiative Measure No. 276 § 31); Amended by Laws 1st Ex Sess 1975 ch 294 § 17, effective July 2, 1975; Laws 2nd Ex Sess 1975–76 ch 82 § 5; Laws 1st Ex Sess 1977 ch 314 § 13.]

Reports required to be filed with medical disciplinary board, exempt: RCWA 18.72.265.

CJS Records §§ 35 et seq.

Ops Atty Gen 1973 No. 4 (availability, for inspection and copying, of records of school district relating to district employees' salaries and payroll deductions).

Ops Atty Gen 1980 No. 1 (except where prohibited by RCWA 42.17.260(5), inspection and copying of an assessor's property tax assessment roll and supporting materials must be allowed unless the specific exemptions covering taxpayer information, as set forth in RCW 42.17.310(1)(c) and RCWA 84.40.020, are applicable in a given case).

Ops Atty Gen 1980 LO No. 14 (it is no longer a function of the secretary of state's office to collect, sort, or systematize statistics relating to agriculture, immigration, labor, manufacturing, mining, and other related subjects in order to prepare and publish either a biennial statistical report to the legislature or a comprehensive report aimed generally at attracting tourists or business activities to the state; however, the secretary of state, as ex-officio commissioner of statistics, may continue to seek and collect such statistics for whatever legitimate public purpose, in unpublished form, they serve; and, so long as he does not do so for the purpose of publication at state expense, he may also prepare tables, with narrative abstracts, of such statistics to the extent that the preparation of such tables and narrative abstracts is reasonably necessary in order to effectuate the legislative public purpose for which the statistics have been collected; however, the cost must be less than $3,000).

Key Number Digests: Records ⟸14.

Under RCWA 42.17.310(1)(i), which exempts from public disclosure intra-agency memorandums in which opinions are expressed or policies formulated, only those matters revealing the deliberative process, as opposed to the facts upon which a decision is based, are exempt. Subjective evaluations are not exempt if they are treated as raw factual data by the agency and are not subject to further deliberation and consideration. Hearst Corp. v Hoppe (1978) 90 Wn 2d 123, 580 P2d 246.

For purposes of RCWA 42.17.310(1)(c), which exempts from public disclosure matters which would violate a taxpayer's right to privacy, "right to privacy" refers to essentially intimate or private matters the disclosure of which would be highly offensive to a reasonable person and which are not a subject of legitimate public concern. An agency's promise of confidentiality does not override the statutory disclosure requirements. Hearst Corp. v Hoppe (1978) 90 Wn 2d 123, 580 P2d 246.

RCWA 84.40.020, which relates to public inspection of the listing of real property for taxation, is consistent with and incorporates the overall policy of the public disclosure act (RCWA 42.17). RCWA 84.40.020 establishes a more specific and supplemental protected area of privacy as "confidential income data." Hearst Corp. v Hoppe (1978) 90 Wn 2d 123, 580 P2d 246.

For purposes of RCWA 42.17.310(1)(d), which generally exempts specific investigative records from public disclosure, files regarding particular and definite violations of the public disclosure statute (RCWA 42.17) and their investigation are specific investigative records. Ashley v Washington State Public Disclosure Com. 16 Wn App 830, 560 P2d 1156.

For purposes of RCWA 42.17.310(2), which exempts information which would violate a vital government interest from public disclosure, the commission's law enforcement related responsibilities are vital governmental interests. Ashley v Washington State Public Disclosure Com. 16 Wn App 830, 560 P2d 1156.

The Public Disclosure Commission is an "investigative agency" within the meaning of RCWA 42.17.310(1), which exempts certain files of investigative agencies from public disclosure. Ashley v Washington State Public Disclosure Com. (1977) 16 Wn App 830, 560 P2d 1156.

Under RCWA 42.17.310(2), which exempts from public disclosure records which would violate vital governmental interests, an incomplete and ongoing criminal investigation is violated or impaired by the release of all information relating thereto. Ashley v Washington State Public Disclosure Com. (1977) 16 Wn App 830, 560 P2d 1156.

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42.17.315 Certain records obtained by colleges, universities, libraries or archives exempt

Notwithstanding the provisions of RCW 42.17.260 through 42.17.340, as now or hereafter amended, no state college, university, library, or archive shall be required by chapter 42.17 RCW to make available for public inspection and copying any records or documents obtained by said college, university, library, or archive through or concerning any gift, grant, conveyance, bequest, or devise, the terms of which restrict or regulate public access to such records or documents: *Provided*, That this section shall not apply to any public records as defined in RCW 40.14.010. [Added by Laws 1st Ex Sess 1975 ch 294 § 22, effective July 2, 1975.]

CJS Records §§ 35 et seq.
Key Number Digests: Records ⇐14.

42.17.320 Prompt responses required

Responses to requests for public records shall be made promptly by agencies. Denials of requests must be accompanied by a written statement of the specific reasons therefor. Agencies shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final agency action for the purposes of judicial review. [Enacted Laws 1973 ch 1 § 32, effective January 1, 1973 (Initiative Measure No. 276 § 32); Amended by Laws 1st Ex Sess 1975 ch 294 § 18, effective July 2, 1975.]

CJS Records §§ 35 et seq.
Key Number Digests: Records ⇐14.

42.17.330 Court protection of public records

The examination of any specific public record may be enjoined if, upon motion and affidavit, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions. [Enacted Laws 1973 ch 1 § 33, effective January 1, 1973 (Initiative Measure No. 276 § 33); Amended by Laws 1st Ex Sess 1975 ch 294 § 19, effective July 2, 1975.]

CJS Records §§ 35 et seq.
Ops Atty Gen 1973 No. 4 (availability, for inspection and copying, of records of school district relating to district employees' salaries and payroll deductions).
Key Number Digests: Records ⇐14.

42.17.340 Judicial review of agency actions

(1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is required.

(2) Judicial review of all agency actions taken or challenged under RCW 42.17.250 through 42.17.320 shall be de novo. Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Courts may examine any record in camera in any proceeding brought under this section.

(3) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not to exceed twenty-five dollars for each day that he was denied the right to inspect or copy said public record. [Enacted Laws 1973 ch 1 § 34, effective January 1, 1973 (Initiative Measure No. 276 § 34); Amended by Laws 1st Ex Sess 1975 ch 294 § 20, effective July 2, 1975.]

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WAC Regulations

WAC 446-20-190 DISSEMINATION—RESEARCH PURPOSES. Criminal history record information which includes nonconviction data may be disseminated for research purposes according to the provisions of RCW 10.97.050 (6). The transfer agreement provided for by that section shall be substantially similar to that set forth in WAC 446-20-420 (Model Transfer Provisions).

WAC 446-20-420 MODEL AGREEMENT FOR RESEARCH, EVALUATIVE OR STATISTICAL PURPOSES.

AGREEMENT made this ..... day of ....., 198_, between ....., (hereinafter referred to as "RESEARCHER") and ....., (hereinafter referred to as "CRIMINAL JUSTICE AGENCY)"*

WHEREAS THE RESEARCHER had made a written request to the CRIMINAL JUSTICE AGENCY dated ....., a copy of which is annexed hereto and made a part hereof, and

WHEREAS the CRIMINAL JUSTICE AGENCY has reviewed said written request and determined that it clearly specifies (1) the criminal history record information sought, and (2) the research, evaluative or statistical purpose for which the said information is sought,** and

WHEREAS the RESEARCHER represents that (he) (she) (it) is in receipt of, and is familiar with, the provisions of chapter 10.97 RCW, 28 CFR Part 22, including provisions for sanctions at Parts 22.24(c) and 22.29 thereof,

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. The CRIMINAL JUSTICE AGENCY will supply the following items of information to the RESEARCHER:

(Describe in Detail)***

.....
.....
.....
.....

2. The RESEARCHER will:

(a) use the said information only for the research, evaluative, or statistical purposes described in the above mentioned written request dated ....., and for no other purpose;

(b) limit access to said information to the RESEARCHER and those of the RESEARCHER'S employees whose responsibilities cannot be accomplished without such access, and who have been advised of, and agreed to comply with, the provisions of this agreement, and of 28 CFR Part 22;****

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(c) store all said information received pursuant to this agreement in secure, locked containers;
(d) so far as possible, replace the name and address of any record subject with an alpha-numeric or other appropriate code;
(e) immediately notify the CRIMINAL JUSTICE AGENCY in writing of any proposed material changes in the purposes or objectives of its research, or in the manner in which said information will be used.

3. The RESEARCHER will not:
(a) disclose any of the said information in a form which is identifiable to an individual, in any project report or in any manner whatsoever, except pursuant to 28 CFR Part 22.24 (b) (1) (2).
(b) make copies of any of the said information, except as clearly necessary for use by employees or contractors to accomplish the purposes of the research. (To the extent reasonably possible, copies shall not be made of criminal history record information, but information derived therefrom which is not identifiable to specific individuals shall be used for research tasks. Where this is not possible, every reasonable effort shall be made to utilize coded identification data as an alternative to names when producing copies of criminal history record information for working purposes.)
(c) utilize any of the said information for purposes or objectives or in a manner subject to the requirement for notice set forth in 2. (e) until specific written authorization therefor is received from the CRIMINAL JUSTICE AGENCY.

4. In the event the RESEARCHER deems it necessary, for the purposes of the research, to disclose said information to any subcontractor, (he) (she) (it) shall secure the written agreement of said subcontractor to comply with all the terms of this agreement as if (he) (she) (it) were the RESEARCHER named herein.****

5. The RESEARCHER further agrees that:
(a) the CRIMINAL JUSTICE AGENCY shall have the right, at any time, to monitor, audit, and review the activities and policies of the RESEARCHER or its subcontractors in implementing this agreement in order to assure compliance therewith; and
(b) upon completion, termination or suspension of the researcher, it will return all said information, and any copies thereof made by the RESEARCHER, to the CRIMINAL JUSTICE AGENCY, unless the CRIMINAL JUSTICE AGENCY gives its written consent to destruction, obliteration or other alternative disposition.

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6. In the event the RESEARCHER fails to comply with any term of this Agreement the CRIMINAL JUSTICE AGENCY shall have the right to take such action as it deems appropriate, including termination of this Agreement. If the CRIMINAL JUSTICE AGENCY so terminates this Agreement, the RESEARCHER and any subcontractors shall forthwith return all the said information, and all copies made thereof, to the CRIMINAL JUSTICE AGENCY or make such alternative disposition thereof, as is directed by the CRIMINAL JUSTICE AGENCY. The exercise of remedies pursuant to this paragraph shall be in addition to all sanctions provided by law, and to legal remedies available to parties injured by disclosures.

7. INDEMNIFICATION. The RESEARCHER agrees to indemnify and hold harmless (CRIMINAL JUSTICE AGENCY) and its officers, agents and employees from and against any and all loss, damages, injury, liability suits and proceedings however caused, arising directly or indirectly out of any action or conduct of the (RESEARCHER) in the exercise or enjoyment of this agreement. Such indemnification shall include all costs of defending any such suit, including attorney fees.

IN WITNESS WHEREOF the parties have signed their names hereto this ..... day of ....., 198...

..... (CRIMINAL JUSTICE AGENCY)

by .....
(Name)

Title: .....

..... (RESEARCHERS)

by .....
(Name)

Title: .....

COMPLIANCE AGREEMENT of employee, consultant or subcontractor.

(I) (We), employee(s) of, consultant to, (and) (or) subcontractor of the RESEARCHER, acknowledge familiarity with the terms and conditions of the foregoing agreement between the CRIMINAL JUSTICE AGENCY and RESEARCHER, and agree to comply with the terms and conditions thereof in (my) (our) use and protection of the criminal history record information obtained pursuant to the foregoing agreement.

....
(date) (signature)

....
(date) (signature)

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority	15-2-25	X		
2. Privacy and Security Council				
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	15-2-24(c)	X		
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	15-2-24(d)	X		
3.12 Authorizes to Private Sector	15-2-24(d)	X		
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	15-2-24(c)	X		
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	15-2-24(d)	X		
3.22 Authorizes to Private Sector	15-2-24(d)	X		
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	15-2-24(e)	X		
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	15-2-24(d)	X		
3.32 Authorizes to Private Sector	15-2-24(d)	X		
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy				
5. Right to Challenge				
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information	15-2-24(h)	X		
8. Purging Conviction Information				

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information				
11. Removal of Disqualifications				
12. Right to State Non-Existence of Record				
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	15-2-24(f)(g)	X		
14.2 Auditing Requirements				
14.3 Other Accuracy/Completeness Requirements				
15. Dedication				
16. Civil Remedies				
17. Criminal Penalties	29B-1-5 15-2-24(j)	X X		
18. Public Records	29B-1-1	X		
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security				
22.1 Physical (Building) Security				
22.2 Administrative Security				
22.3 Computer Security				
23. Transaction Logs				
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)				
27. FOIA (Excluding CJI)	29B-1-4	X		
28. Central State Repository	15-2-24	X		

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority				
2. Privacy and Security Council				
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	165.83	X		
3.11 Authorizes to Govt. Non-Criminal Justice Agencies	165.83	X		
3.12 Authorizes to Private Sector				
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies				
3.15 Prohibits to Private Sector				
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	165.83	X		
3.21 Authorizes to Govt. Non-Criminal Justice Agencies	165.83	X		
3.22 Authorizes to Private Sector				
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies				
3.25 Prohibits to Private Sector				
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	165.83	X		
3.31 Authorizes to Govt. Non-Criminal Justice Agencies	165.83	X		
3.32 Authorizes to Private Sector				
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies				
3.35 Prohibits to Private Sector				
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy				
5. Right to Challenge				
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information				
8. Purging Conviction Information				

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information				
11. Removal of Disqualifications				
12. Right to State Non-Existence of Record				
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	165.83 165.84	X X		
14.2 Auditing Requirements				
14.3 Other Accuracy/Completeness Requirements				
15. Dedication				
16. Civil Remedies				
17. Criminal Penalties				
18. Public Records	19.21			X
19. Separation of Files				
20. Regulation of Intelligence Collection				
21. Regulation of Intelligence Dissemination				
22. Security				
22.1 Physical (Building) Security				
22.2 Administrative Security				
22.3 Computer Security				
23. Transaction Logs				
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)	19.21	X		
27. FOIA (Excluding CJI)				
28. Central State Repository	165.83	X		

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19.21 Custody and delivery of official property and records

(1) Each and every officer of the state, or of any county, town, city, village, school district, or other municipality or district, is the legal custodian of and shall safely keep and preserve all property and things received from his predecessor or other persons and required by law to be filed, deposited, or kept in his office, or which are in the lawful possession or control of himself or his deputies, or to the possession or control of which he or they may be lawfully entitled, as such officers.

(2) Except as expressly provided otherwise, any person may with proper care, during office hours and subject to such orders or regulations as the custodian thereof prescribes, examine or copy any of the property or things mentioned in sub. (1). Any person may, at his own expense and under such reasonable regulations as the custodian prescribes, copy or duplicate any materials, including but not limited to blueprints, slides, photographs and drawings. Duplication of university expansion materials may be performed away from the office of the custodian if necessary.

(3) Upon the expiration of his term of office, or whenever his office becomes vacant, each such officer, or on his death his legal representative, shall on demand deliver to his successor all such property and things then in his custody, and his successor shall receipt therefor to said officer, who shall file said receipt, as the case may be, in the office of the secretary of state, county clerk, town clerk, city clerk, village clerk, school district clerk, or clerk or other secretarial officer of the municipality or district, respectively; but if a vacancy occurs before such successor is qualified, such property and things shall be delivered to and be receipted for by such secretary or clerk, respectively, on behalf of the successor, to be delivered to such successor upon the latter's receipt.

(4) Any person who violates this section shall, in addition to any other liability or penalty, civil or criminal, forfeit not less than $25 nor more than $2,000; such forfeiture to be enforced by a civil action on behalf of, and the proceeds to be paid into the treasury of the state, municipality, or district, as the case may be.

(5) (a) Any city council or village board may provide by ordinance for the destruction of obsolete public records. Prior to any such destruction at least 60 days' notice in writing of such destruction shall be given the historical society which shall preserve any such records it determines to be of historical interest. The historical society may, upon application, waive such notice. No assessment roll containing forest crop acreage may be destroyed without prior approval of the secretary of revenue.

(b) The period of time any city or village public record shall be kept before destruction shall be as prescribed by ordinance unless a specific period of time is provided by statute. The period prescribed in such ordinance shall be not less than 2 years with respect to water stubs, receipts of current billings and customer's ledgers of any municipal utility, and 7 years for other records unless a shorter period has been fixed by the public records board pursuant to s. 16.80(3) (e).

(c) Any city council or village board may also provide by ordinance for the keeping and preservation of public records by the use of microfilm or other reproductive device. Any photographic reproduction shall be deemed an original record for all purposes if it meets the standards established in s. 16.80(7), so far as the same may be applicable.

(6) Counties having a population of 500,000 or more may provide by ordinance for the destruction of obsolete public records without regard to ss. 59.715 to 59.717 and may undertake a management of records service. The period of time any public record shall be kept before destruction shall be determined by ordinance except that the specific period of time expressed within s. 59.715 shall apply as to those records or documents. Prior to any destruction of records, except those specified within s. 59.715 as well as those having a confidential character as determined by the county, at least 60 days' notice of such destruction shall be given in writing, to the historical society, which may preserve any such records it determines to be of historical interest; however no notice need be given for any of the aforesaid class of records for which destruction has previously been approved by the historical society or in which it has indicated that it has no interest for historical purposes. The county board may also provide, by ordinance, a program for the keeping, preservation, retention and disposition of public records including the establishment of a committee on public records and may institute a record management service for the county and may appropriate funds to accomplish such purposes.

* * * * *

SUBCHAPTER II. CUSTODY OF OFFICIAL PROPERTY [NEW]

19.21 Custody and delivery of official property and records

* * * * * * * * * *

(2) Except as expressly provided otherwise, any person may with proper care, during office hours and subject to such orders or regulations as the custodian thereof prescribes, examine or copy any of the property or things mentioned in sub. (1). Any person may, at his or her own expense and under such reasonable regulations as the custodian prescribes, copy or duplicate any materials, including but not limited to blueprints, slides, photographs and drawings. Duplication of university expansion materials may be performed away from the office of the custodian if necessary. Computer programs, as defined in s. 16.97(4)(c), are not subject to examination under this subsection, but the data stored in the memory of a computer is subject to the right of examination and copying.

* * * * * * * * * *

(5)(a) Any city council or village board and any town board, subject to s. 60.756, may provide by ordinance for the destruction of obsolete public rec-

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ords. Prior to * * * the destruction at least 60 days' notice in writing of such destruction shall be given the historical society which shall preserve any such records it determines to be of historical interest. The historical society may, upon application, waive such notice. No assessment roll containing forest crop acreage may be destroyed without prior approval of the secretary of revenue.

(b) The period of time any town, city or village public record * * * is kept before destruction shall be as prescribed by ordinance unless a specific period of time is provided by statute. The period prescribed in * * * the ordinance * * * may not be * * * less than 2 years with respect to water stubs, receipts of current billings and customer's ledgers of any municipal utility, and 7 years for other records unless a shorter period has been fixed by the public records board * * * under s. 16.61(3)(e).

(c) Any town board, city council or village board may * * * provide by ordinance for the keeping and preservation of public records by the use of microfilm or other reproductive device. Any photographic reproduction shall be deemed an original record for all purposes if it meets the applicable standards established in s. 16.61(7) * * *.

(6) * * * Any county having a population of 500,000 or more may provide by ordinance for the destruction of obsolete public records without regard to ss. 59.715 to 59.717 and may undertake a management of records service and any other county may so provide subject to ss. 59.715 to 59.717. The period of time any public record shall be kept before destruction shall be determined by ordinance except that in all counties the specific period of time expressed within s. 59.715 shall apply * * *. Prior to any destruction of records under this subsection, except those specified within s. 59.715 * * *, at least 60 days' notice of such destruction shall be given in writing, to the historical society, which may preserve any * * * records it determines to be of historical interest * * *. Notice is not required for any * * * records for which destruction has previously been approved by the historical society or in which * * * the society has indicated that it has no interest for historical purposes. Records which have a confidential character while in the possession of the original custodian shall retain such confidential character after transfer to the historical society unless the director of the historical society, with the concurrence of the original custodian, determines that such records shall be made accessible to the public under such proper and reasonable rules as the historical society adopts. The county board may * * * provide, by ordindance, a program for the keeping, preservation, retention and disposition of public records including the establishment of a committee on public records and may institute a record management service for the county and may appropriate funds to accomplish such purposes.

(7) Any school district, except a city school district or a school district in a city of the 1st class, may provide for the destruction of obsolete school records. Prior to any such destruction, at least 60 days' notice in writing of such destruction shall be given the historical society, which shall preserve any such records it determines to be of historical interest. The historical society may, upon application, waive the notice. The period of time a school district record shall be kept before destruction shall be not less than 7 years. This section shall not apply to pupil records under s. 118.125.

History—
Subsec. (2) amended by— L.1979, c. 221, § 89, eff. April 30, 1980.

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
1. State Regulatory Authority				
2. Privacy and Security Council				
3. Dissemination Regulations				
Conviction Information				
3.10 Authorizes to Criminal Justice Agencies	9-2-568(b)			X
3.11 Authorizes to Govt. Non-Criminal Justice Agencies				
3.12 Authorizes to Private Sector				
3.13 Prohibits to Criminal Justice Agencies				
3.14 Prohibits to Govt. Non-Criminal Justice Agencies	9-2-568(d)			X
3.15 Prohibits to Private Sector	9-2-568(d)			X
Non-Conviction Information				
3.20 Authorizes to Criminal Justice Agencies	9-2-568(b)			X
3.21 Authorizes to Govt. Non-Criminal Justice Agencies				
3.22 Authorizes to Private Sector				
3.23 Prohibits to Criminal Justice Agencies				
3.24 Prohibits to Govt. Non-Criminal Justice Agencies	9-2-568(d)			X
3.25 Prohibits to Private Sector	9-2-568(d)			X
Arrest Information				
3.30 Authorizes to Criminal Justice Agencies	9-2-568(b)			X
3.31 Authorizes to Govt. Non-Criminal Justice Agencies				
3.32 Authorizes to Private Sector				
3.33 Prohibits to Criminal Justice Agencies				
3.34 Prohibits to Govt. Non-Criminal Justice Agencies	9-2-568(d)			X
3.35 Prohibits to Private Sector	9-2-568(d)			X
4. Inspection				
4.1 Right to Inspect Only				
4.2 Right to Inspect and Take Notes				
4.3 Right to Inspect and Obtain Copy				
5. Right to Challenge				
6. Judicial Review of Challenged Information				
7. Purging Non-Conviction Information				
8. Purging Conviction Information				

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Category	Citation	1978 Compendium	1979 Supplement	1981 Supplement
9. Sealing Non-Conviction Information				
10. Sealing Conviction Information				
11. Removal of Disqualifications				
12. Right to State Non-Existence of Record				
13. Research Access				
14. Accuracy and Completeness				
14.1 Disposition Reporting Requirements	9-2-566			X
14.2 Auditing Requirements				
14.3 Other Accuracy/Completeness Requirements				
15. Dedication				
16. Civil Remedies				
17. Criminal Penalties				
18. Public Records	9-9-101			X
19. Separation of Files				
20. Regulation of Intelligence Collection	9-2-568			X
21. Regulation of Intelligence Dissemination	9-136.27 9-2-568	X		X
22. Security				
22.1 Physical (Building) Security				
22.2 Administrative Security	9-2-568			X
22.3 Computer Security				
23. Transaction Logs				
24. Training Employees				
25. Listing of Information Systems				
26. FOIA (Including CJI)				
27. FOIA (Excluding CJI)	9-9-101 9-2-568(d)			X X
28. Central State Repository	9-2-564			X

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Division 3. Criminal Identification Division

§ 9-2-560. Created.

There is hereby created an agency of state government, under the office of the attorney general, which shall be known as the Wyoming criminal identification division. (Laws 1973, ch. 246, § 1.)

§ 9-2-561. Director; appointment.

The attorney general, with the approval of the governor, shall appoint a director of the criminal identification division. (Laws 1973, ch. 246, § 1.)

§ 9-2-562. Same; qualifications.

The director shall be a person experienced in modern methods of criminal identification and shall possess such qualifications as may be specified by the attorney general. (Laws 1973, ch. 246, § 1.)

§ 9-2-563. Same; duties generally.

The director shall be the chief administrative officer of the criminal identification division and shall supervise and direct the administration of all activities of the division. He shall, subject to the written approval of the attorney general, prescribe rules and regulations not inconsistent with law for the operation of the division and the conduct of its personnel and the distribution and performance of their duties. He shall employ such identification specialists and clerical assistants as are necessary to the proper and efficient operation of the division. The director shall be responsible to the attorney general and shall keep him informed of the activities of the division. (Laws 1973, ch. 246, § 1.)

§ 9-2-564. Division; powers and duties generally.

(a) It shall be the duty of the criminal identification division to establish and maintain complete systems for the identification of criminals which comply with modern and accepted methods in the field of criminal identification. The division shall obtain from whatever source procurable, and shall file and preserve for record such plates, photographs, outline pictures, fingerprints, measurements, descriptions, modus operandi statements and other information about, concerning or relating to any and all persons who have been convicted of or arrested for the commission of any felony or who shall have been convicted of or arrested for any misdemeanor involving moral turpitude.

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(b) The division may also obtain like information concerning persons who have been convicted of violating any of the military, naval or criminal laws of the United States, or who may have been convicted of the commission of a crime in any other state, country, district or province which, if committed within this state, would be a felony.

(c) All information kept by the division shall be maintained, recorded and indexed in a systematic manner for the purpose of providing a convenient and expeditious method of consultation and comparison. (Laws 1973, ch. 246, § 1.)

§ 9-2-565. Same; establishing uniform procedures and forms; training.

The criminal identification division shall establish uniform procedures and forms for the collection and dissemination of criminal identification data and shall assist the law enforcement agencies within the state in the establishment and implementation of such uniform procedures. The division shall provide to law enforcement agencies and their personnel such training, assistance and instruction as may be deemed necessary to assure uniformity in the gathering and dissemination of criminal identification data. It shall be the duty of all law enforcement agencies within the state to cooperate with the division in establishing and maintaining an efficient and coordinated system of identification. (Laws 1973, ch. 246, § 1.)

§ 9-2-566. Duties of law enforcement agencies and heads of custodial institutions.

(a) Each time an adult is arrested within the state for a felony or for a misdemeanor involving moral turpitude, the state or local law enforcement agency responsible for the arrest shall cause such person to be photographed, fingerprinted and otherwise processed in accordance with the uniform procedures prescribed by the criminal identification division. Upon the completion of processing, the law enforcement agency responsible for the arrest shall send to the division such information as the director may deem necessary to aid the division in the proper discharge of its duties under this act [§§ 9-2-530 to 9-2-571].

(b) It shall be the duty of the warden of the state penitentiary and the superintendents of the state industrial school [industrial institute] and the Wyoming girls' school to make and furnish to the division, in such manner and according to such methods as the division shall prescribe, photographs, fingerprints, modus operandi statements and other required identification of all persons who are confined in the respective institutions at the time of the effective date of this act, or who shall hereafter be confined therein.

(c) No minor shall be photographed or fingerprinted except in accordance with the Juvenile Court Act of 1971 [§§ 14-8-101 to 14-8-144]. (Laws 1973, ch. 246, § 1.)

Cross references. — As to the Wyoming girls' school, see §§ 9-6-401 to 9-6-415. For the Training School Act of 1971, see §§ 9-6-601 to 9-6-632.

Effective date. — Section 4, ch. 246, Laws 1973, provides that the act shall be in force and effect from and after July 1, 1973.

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§ 9-2-567. Cooperation with similar agencies in other jurisdictions.

The criminal identification division shall cooperate with similar agencies of other states and with the national bureau of identification in the department of justice in Washington, District of Columbia, for the purpose of developing and carrying on a complete interstate, national and international system of criminal identification. (Laws 1973, ch. 246, § 1.)

§ 9-2-568. Authority to compile, disseminate and exchange information; immunity; access.

(a) Every law enforcement officer in this state who has the authority to make arrests for violations of criminal laws, the attorney general, his deputies and assistants, and every prosecuting attorney, or deputy or assistant prosecuting attorney in this state shall have the authority to take fingerprints, photographs and other information relating to criminal identification and to compile reports or other documents in writing containing criminal intelligence information, including but not limited to statements taken from police informants, and reports based on the investigation and surveillance of suspected criminal activity.

(b) Such authorized persons may freely disseminate and exchange criminal identification data and criminal intelligence information among themselves and among law enforcement agencies of other states or of the federal government.

(c) No person authorized to disseminate or exchange information shall be subject to liability, either civil or criminal, for contributing criminal identification data or criminal intelligence information or disseminating the same to authorized persons.

(d) Access to criminal identification and intelligence information shall be available to law enforcement agencies only, and it shall be the responsibility of each law enforcement agency in the state handling such information to take reasonable security precautions to prevent unauthorized persons from gaining access thereto. (Laws 1973, ch. 246, § 1.)

§ 9-2-569. Cooperation to achieve purposes of act; joint purchases.

(a) The director of the criminal identification division shall cooperate with the director of the division of criminal investigation and with other law enforcement agencies in the state so that all agencies can successfully achieve the purposes of combating crime and developing an efficient system for the gathering, storage and dissemination of criminal intelligence. Criminal identification data on file with the division shall be made available to any law enforcement agency within the state upon request.

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(b) Under the supervision of the attorney general, and with the advice of the department of administration and fiscal control, the criminal identification division and the division of criminal investigation may jointly purchase and use such equipment and supplies as are susceptible to use by both agencies upon a cost-sharing basis agreed upon by the directors of the respective divisions. (Laws 1973, ch. 246, § 1.)

§ 9-2-570. Transfer of property, etc.

On the effective date of this act, the Wyoming board of identification and the Wyoming bureau of identification created by chapter 61, Session Laws of Wyoming, 1963, shall terminate, and all books, records, reports, equipment, property, accounts, liabilities and funds of those agencies shall be transferred to the division of criminal identification, office of the attorney general. (Laws 1973, ch. 246, § 1.)

Effective date. — Section 4, ch. 246, Laws 1973, provides that the act shall be in force and effect from and after July 1, 1973.

§ 9-2-571. Advisory council.

An advisory council is hereby created for the division of criminal investigation and for the division of criminal identification to be composed of seven (7) members appointed by the governor. One (1) member shall be the president of the Wyoming peace officers' association; one (1) member shall be a sheriff from a county within Wyoming; one (1) member shall be a police chief from a city or town in Wyoming; two (2) members who shall represent the public at large; and two (2) members who shall be active in the field of law enforcement in Wyoming. It shall be the duty of the advisory council to assist and advise the attorney general on matters relating to or concerning the operation and administration of the state divisions of criminal investigation and identification. (Laws 1973, ch. 246, § 1.)

Appropriation. — Section 2, ch. 246, Laws 1973, reads: "There is hereby appropriated out of any funds of the treasury of Wyoming, not otherwise appropriated, the sum of $182,087 for

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CHAPTER 9

Public Records

Sec.
9-9-101. Definitions.
9-9-102. Inspection; generally.
9-9-103. Same; grounds for denying right of inspection; statement of grounds for denial; order to show cause; order to restrict disclosure; hearing.
9-9-104. Copies, printouts or photographs; fees.
9-9-105. Penalty.

Cross references. — As to public records in regard to the state library and archives, see §§ 9-3-980 to 9-3-988. As to stealing or altering public records, see §§ 6-8-705 and 6-8-706. As to filing of documents, see ch. 10 of this title.

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§ 9-9-101. Definitions.

(a) Definitions as used in this act [§§ 9-9-101 to 9-9-105]:

(i) "Public records" when not other specified shall include any paper, correspondence, form, book, photograph, photostat, firm, microfilm, sound recording, map drawing, or other document, regardless of physical form or characteristics, and including all copies thereof, that have been made by the state of Wyoming and any counties, municipalities and political subdivisions thereof and by any agencies of the state of Wyoming, counties, municipalities, and political subdivisions thereof, or received by them in connection with the transaction of public business, except those privileged or confidential by law;

(ii) Public records shall be classified as follows:

(A) "Official public records" shall include all original vouchers, receipts, and other documents necessary to isolate and prove the validity of every transaction relating to the receipt, use and disposition of all public property and public income from all sources whatsoever; all agreements and contracts to which the state of Wyoming or any agency or subdivision thereof may be a party; all fidelity, surety and performance bonds; all claims filed against the state of Wyoming or any agency or subdivision thereof; all records or documents required by law to be filed with or kept by any agency or the state of Wyoming; and all other documents or records determined by the records committee to be official public records;

(B) "Office files and memoranda" shall include all records, correspondence, exhibits, books, booklets, drawings, maps, blank forms, or documents not above defined and classified as offical public records; all duplicate copies of official public records filed with any agency of the state of Wyoming or subdivision thereof; all documents and reports made for the internal administration of the office to which

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they pertain but not required by law to be filed or kept with such agency; and all other documents or records, determined by the records committee to be office files and memoranda;

(iii) "Writings" means and includes all books, papers, maps, photographs, cards, tapes, recordings or other documentary materials, regardless of physical form or characteristics;

(iv) "Political subdivision" means and includes every county, city and county, city, incorporated and unincorporated town, school district and special district within the state;

(v) "Official custodian" means and includes any officer or employee of the state or any agency, institution or political subdivision thereof, who is responsible for the maintenance, care and keeping of public records, regardless of whether such records are in his actual personal custody and control;

(vi) "Custodian" means and includes the official custodian or any authorized person having personal custody and control of the public records in question;

(vii) "Person" means and includes any natural person, corporation, partnership, firm or association;

(viii) "Person in interest" means and includes the person who is the subject of a record or any representative designated by said person, except that if the subject of the record is under legal disability, the term "person in interest" shall mean and include the parent or duly appointed legal representative. (Laws 1969, ch. 145, § 1.)

§ 9-9-102. Inspection; generally.

(a) All public records shall be open for inspection by any person at reasonable times, except as provided in this act [§§ 9-9-101 to 9-9-105] or as otherwise provided by law, but the official custodian of any public records may make such rules and regulations with reference to the inspection of such records as shall be reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(b) If the public records requested are not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact.

(c) If the public records requested are in the custody and control of the person to whom application is made but are in active use or in storage, and therefore not available at the time an applicant asks to examine them, the custodian shall forthwith notify the applicant of this fact. (Laws 1969, ch. 145, § 2.)

Cross reference. — As to examination of books of state, county and municipal institutions, see § 9-2-410. As to county records open to public inspection, see § 18-2-104.

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§ 9-9-103. Same; grounds for denying right of inspection; statement of grounds for denial; order to show cause; order to restrict disclosure; hearing.

(a) The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one (1) or more of the following grounds or as provided in subsection (b) or (d) of this section:

(i) Such inspection would be contrary to any state statute;

(ii) Such inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law; or

(iii) Such inspection is prohibited by rules promulgated by the supreme court, or by the order of any court of record.

(b) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest;

(i) Records of investigations conducted by, or of intelligence information or security procedures of, any sheriff, county attorney, city attorney, the attorney general, police department or any investigatory files compiled for any other law enforcement or prosecution purposes;

(ii) Test questions, scoring keys and other examination data pertaining to administration of a licensing examination, examination for employment or academic examination; except that written promotional examinations and the scores or results thereof shall be available for inspection, but not copying or reproduction, by the person in interest after the conducting and grading of any such examination;

(iii) The specific details of bona fide research projects being conducted by a state institution;

(iv) The contents of real estate appraisals made for the state or a political subdivision thereof, relative to the acquisition of property or any interest in property for public use, until such time as title of the property or property interest has passed to the state or political subdivision, except that the contents of such appraisal shall be available to the owner of the property at any time, and except as provided by Wyoming Statutes;

(v) Interagency or intraagency memorandums or letters which would not be available by law to a private party in litigation with the agency.

(c) If the right of inspection of any record falling within any of the classifications listed in this section is allowed to any officer or employee of any newspaper, radio station, television station or other person or agency in the business of public dissemination of news or current events, it may be allowed to all such news media.

(d) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law:

(i) Medical, psychological, and sociological data on individual persons, exclusive of coroners' autopsy reports;

(ii) Adoption records or welfare records on individual persons;

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(iii) Personnel files except that such files shall be available to the duly elected and appointed officials who supervise the work of the person in interest. Applications, performance ratings and scholastic achievement data shall be available only to the person in interest and to the duly elected and appointed officials who supervise his work;

(iv) Letters of reference;

(v) Trade secrets, privileged information and confidential commercial, financial, geological or geophysical data furnished by or obtained from any person;

(vi) Library, archives and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of such contributions;

(vii) Hospital records relating to medical administration, medical staff, personnel, medical care, and other medical information, whether on individual persons or groups, or whether of a general or specific classification;

(viii) School district records containing information relating to the biography, family, physiology, religion, academic achievement and physical or mental ability of any student except to the person in interest or to the officials duly elected and appointed to supervise him.

(e) If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied, and it shall be furnished forthwith to the applicant.

(f) Any person denied the right to inspect any record covered by this act [§§ 9-9-101 to 9-9-105] may apply to the district court of the district wherein the record is found for any order directing the custodian of such record to show cause why he should not permit the inspection of such record.

(g) If, in the opinion of the official custodian of any public record, disclosure of the contents of said record would do substantial injury to the public interest, notwithstanding the fact that said record might otherwise be available to public inspection, he may apply to the district court of the district in which such record is located for an order permitting him to restrict such disclosure. After hearing, the court may issue such an order upon a finding that disclosure would cause substantial injury to the public interest. The person seeking permission to examine the record shall have notice of said hearing served upon him in the manner provided for service of process by the Wyoming Rules of Civil Procedure and shall have the right to appear and be heard. (Laws 1969, ch. 145, § 3.)

§ 9-9-104. Copies, printouts or photographs; fees.

(a) In all cases in which a person has the right to inspect any public records he may request that he be furnished copies, printouts or photographs for a reasonable fee to be set by the official custodian. Where fees for certified copies or other copies, printouts or photographs of such record are specifically prescribed by law, such specific fees shall apply.

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(b) If the custodian does not have the facilities for making copies, printouts or photographs of records which the applicant has the right to inspect, then the applicant shall be granted access to the records for the purpose of making copies, printouts or photographs. The copies, printouts or photographs shall be made while the records are in the possession, custody and control of the custodian thereof and shall be subject to the supervision of such custodian. When practical, they shall be made in the place where the records are kept, but if it is impractical to do so, the custodian may allow arrangements to be made for this purpose. If other facilities are necessary the cost of providing them shall be paid by the person desiring a copy, printout or photograph of the records. The official custodian may establish a reasonable schedule of time for making copies, printouts or photographs and may charge a reasonable fee for the services rendered by him or his deputy in supervising the copying, printing out or photographing as he may charge for furnishing copies under this section. (Laws 1969, ch. 145, § 4.)

Cross references. — As to reproduction of public records generally, see § 9-3-987. As to duty of county clerk as to photostating, photographing, etc., records, see § 18-3-402.

§ 9-9-105. Penalty.

Any person who willfully and knowingly violates the provisions of this act [§§ 9-9-101 to 9-9-105] shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed one hundred dollars ($100.00). (Laws 1969, ch. 145, § 5.)

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Appendix

RECENT COMPREHENSIVE CRIMINAL HISTORY RECORD LEGISLATION

In the 1978 document, An Analysis of Privacy Issues, published as a companion to the 1978 Compendium, comprehensive statutes and regulations from four states were analyzed (Colorado, Illinois, Maryland and Washington). Possibly thirteen other states could have been considered as having relatively comprehensive legislation or regulations (Alabama, Alaska, California, Florida, Georgia, Iowa, Kansas, Louisiana, Maine, Massachusetts, New Mexico, Oregon and Virginia).

Since 1978, six more states have enacted comprehensive legislation dealing with criminal history record information: Connecticut, Hawaii, Montana, Nebraska, Nevada and Pennsylvania. Following is a brief description of each state's legislation. The reader can consult Section 5 of this volume for references to the full text of each law.

These laws were examined specifically because of their comprehensive nature. It is not easy to characterize state security and privacy laws as comprehensive or not, because the form and treatment of the substance of the statutes vary markedly. However, the laws included here are considered comprehensive because their scope is broad and reflects a full understanding of the issues involved. The approach is systemic as distinguished from piecemeal where only a few specific aspects of criminal justice information policy are treated. With few exceptions, each of the six statutes addresses:

- individual access and right of challenge;
- limits on dissemination (usually discriminating between conviction information and non-conviction information);
- sealing and purging;
- maintenance of information;
- system security;
- designation of a central state repository;
- designation of an oversight and regulatory authority;
- completeness and accuracy requirements;
- disposition reporting;
- auditing requirements; and
- sanctions (civil or criminal penalties).

The six states are treated in alphabetical order and discussion is organized as follows:

The Overview describes the organization of the state information system, the regulatory authority, procedures for rulemaking and any unusual definitions used in the statute.

The section on Obligations of Criminal Justice Agencies covers requirements for accuracy and completeness, disposition reporting, the maintenance of transaction logs, and requirements for system security and employee training.

Record Subject Rights deals with inspection and challenge to records and the remedies available in the event requirements of the statute are violated.

Dissemination Regulations discusses third party disclosures of arrest, non-conviction, conviction and intelligence and investigative information; access for research and statistics purposes is also noted here.

Purging and Sealing deals with provisions for purging or sealing certain types of criminal justice information and the effects of such provisions.

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CONNECTICUT -- CONNECTICUT GENERAL STATUTES ANNOTATED, SECTION 54-142 (WEST)

Overview

The Connecticut statute establishes a central repository for criminal history records in the identification bureau of the Department of State Police under the management and control of the Commissioner of State Police. Although the statute has no provision giving the agency blanket regulatory authority, it does specify certain areas for which the State Police has such oversight, including fingerprint submission and procedures for querying the central state repository prior to dissemination. In a practical sense, since the statute identifies the State Police as the central state repository, the authority of the agency to establish rules governing information practices goes much further. The State Planning Agency (SPA) is required to perform an annual audit of the maintenance and dissemination of criminal history records by the central state repository and other criminal justice agencies. The statute employs standard definitions, and uses the word "disclosure" (defined as "the communication of information to any person by any means") in addition to "dissemination."

Obligations of Criminal Justice Agencies

When any person is arrested for any "crime involving moral turpitude," the person's fingerprints must be taken and forwarded to the central repository. The statute charges criminal justice agencies to report dispositions to the central repository within 90 days and to take steps to minimize the possibility of recording or storing "inaccurate or incomplete" information. Transaction logs must be kept for one year for non-conviction information disseminated outside the agency, and corrected information must be forwarded to criminal justice agencies which received erroneous information. Since January 1, 1979, criminal justice agencies have been required to query the repository for an update prior to the disclosure of criminal history information.

The statute includes extensive and detailed provisions for the security of automated or manual information systems maintained by all criminal justice agencies. Data is to be properly protected against unauthorized loss, alteration or disclosure; and agencies are required to screen personnel with responsibility for criminal history information, and to provide instruction regarding their responsibilities.

Record Subject Rights

The record subject has the right to inspect criminal history records and to challenge them for accuracy and completeness. The statute is vague about the nature of the data subject's appeal rights, providing only that "the state bureau of identification shall notify the person in writing of the results... and of his right to appeal if the challenge is rejected." The statute is silent about civil remedies, but a criminal penalty provision makes it a misdemeanor to secure access to records by false pretenses.

Dissemination Regulations

The statute provides that "criminal history record information other than non-conviction information shall be available to the public unless otherwise prescribed." Non-conviction information other than "erased" information" (see below), may be disclosed only to criminal justice agencies and to others only as provided by statute, executive order, court order or decisional law. There is no specific provision for intelligence and investigative information, though such information is excluded from the definition of criminal history record information. Connecticut has a public record law, reported in the 1978 Compendium, which exempts intelligence and investigative information from requirements of pub-

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lic disclosure.

The statute provides that non-conviction information may be disclosed for statistical and research purposes pursuant to a users agreement between the researcher and the criminal justice agency. The users agreement is to specify the nature of the non-conviction information desired and the purpose of the research; secondary disclosures of the information by the researcher are prohibited.

Purging or Sealing

The statute provides for the return of all identification material (fingerprints, photographs, etc.) to any person who has no previous criminal history and who is not prosecuted subsequent to an arrest or is adjudicated not guilty. This requirement applies only to the central repository, however, and not to local criminal justice agencies.

Connecticut has extensive provisions for the "erasure" of non-conviction information. Erasure of police, prosecution and court records is required automatically upon the dismissal of an action or a finding of not guilty. A conviction may be erased upon application by the record subject if he has received an executive pardon for the offense. The statute also provides that a data subject may deny under oath that he has been arrested for any offense which has been erased.

HAWAII -- REVISED STATUTES, SECTION 846-1, ET. SEQ.

Overview

The Hawaii legislation establishes a "data center" (central repository) which for administrative purposes is located in the judicial department. The director of the center is appointed by the governor. The legislation provides for an advisory committee of criminal justice personnel for "matters related to interagency coordination and user needs," but does not specify the membership or appointing authority for such commission. The attorney general is authorized to make rules and regulations for management of the data center and to perform an annual audit of a random sample of records to assure compliance with the statute.

Obligations of Criminal Justice Agencies

State and local agencies must report arrests to the data center and furnish fingerprints and photos for identification purposes. Dispositions must be reported to the data center within 90 days. Criminal justice agencies are required to "institute a process... that will minimize the possibility of... inaccurate information." Local agencies are required to query the data center before making any dissemination, unless time is a factor and the data center is technically unable to respond within the necessary time period. All criminal justice agencies must maintain, for at least one year, logs of criminal history information disseminated to any agency or person, and must transmit corrected information to any criminal justice agency that may have received erroneous or incomplete information. Extensive provisions specify security requirements for information systems to protect data from unauthorized loss, alteration or disclosure. The statute also provides that personnel responsible for criminal history information shall be carefully selected and properly trained.

Record Subject Rights

The statute allows inspection and review of criminal history information by the record subject, and contemplates that subsequent regulations will provide for challenges to the accuracy or completeness of a record. Criminal justice agencies are required to have an administrative review procedure for disputes between the agency

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and the record subject, but the statute is silent on judicial review. No civil remedies are provided, but it is made a misdemeanor to willfully violate the statute.

Dissemination Regulations

Statutory restrictions on dissemination apply only to non-conviction information. Criminal history record information containing announcements of fugitives or wanted persons, original records of entry maintained chronologically, court records, records of traffic offenses, announcements of executive clemency or pardon, and information pertaining to subjects currently within the jurisdiction of the criminal justice system are not restricted. Non-conviction information may be disseminated only to the following: (1) criminal justice agencies; (2) the governor; (3) the attorney general in connection with law enforcement activities; (4) agencies providing services to the criminal justice system pursuant to a user's agreement; (5) for research and statistical purposes pursuant to a user's agreement; and (6) to other agencies or individuals as authorized by law, executive order or regulation.

Purging or Sealing

A 1979 statute, separate from the criminal history legislation, provides for the expungement from all official records of information pertaining to a discharge of the defendant and dismissal of charges in specified cases. The statute provides also that such expunged information shall be maintained at the appropriate county police department in case of misdemeanors, and by the attorney general in the case of felonies, to be "made accessible to the adult probation division and any other court for purposes of sentencing for any offense committed by the defendant." Thus, although records may be "expunged" in instances of non-conviction, the information is preserved and can be considered if the record subject is later convicted for another offense.

Another statute, set out in the 1978 Compendium, provides for expungement of convictions for drug abuse if the defendant is under 21 years of age and had no previous convictions. The data subject's rights are then restored and he may deny the prior arrest or conviction for the offense.

MONTANA -- MONTANA REVISED CODES ANNOTATED, SECTION 44-5-101 ET. SEQ.

Overview

The Montana legislation establishes a central repository in the state department of justice and authorizes it to make regulations to implement the statute. These regulations apply to the judiciary if the supreme court consents. The department must make an annual audit of a random sample of criminal history record information.

Statutory definitions include a distinction between confidential and public criminal justice information. Confidential information is intelligence and investigative information, fingerprints and photographs, and any other criminal justice information made confidential by law or not clearly defined as public. Public criminal justice information includes court records and proceedings; information of convictions or deferred prosecutions or sentences; post conviction proceedings; and information originated by a criminal justice agency including offense reports and arrest records, bail records and daily jail occupancy rosters. The definition also includes information "considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect." Statistical information is also considered public.

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Criminal Justice Agency Obligations

Criminal justice agencies are directed to gather only that information necessary to their function. Persons arrested for a felony are fingerprinted and photographed and copies of prints and pictures are forwarded to the central repository. If the prints match others already on file, and the arrested person is a fugitive or has a criminal history record, the reporting agency will be notified and furnished with the criminal history. Courts must report dispositions to the central repository and to the originating agency within 15 days, while police and correctional agencies have 30 days. Criminal justice agencies are required to insure the accuracy and completeness of records. Agencies are also required to query the central repository as a check on accuracy and completeness before disseminating criminal history record information unless time prevents the central repository from responding promptly.

Criminal justice agencies are required to maintain transaction logs for "external inquiries" to manual files, and for all inquiries to automated records. When a record is corrected, the agency is required to notify those criminal justice agencies that have received incorrect information. The record subject can get a copy of the complete transaction log.

The legislation has specific and detailed computer security requirements. Computer facilities used for criminal justice information purposes are required to be dedicated unless this is impractical and security can be assured in a shared computer. Other security requirements include identification codes for each terminal and terminal operator; records providing an audit trail regarding files accessed, modified or deleted; and program controls to guard against unauthorized access, alteration or loss of records. There are separate requirements for the security of manual systems and for the qualification and training of personnel responsible for criminal history records.

Record Subject Rights

The record subject is permitted to inspect criminal history information about him and to challenge its accuracy or completeness. Each criminal justice agency is required to have a review procedure to resolve disputes about record accuracy or completeness. A dissatisfied person may appeal to the agency head, and then to the department of justice which is authorized to resolve disputes. The statute does not address judicial review of challenge disputes, though it provides that any person may apply to a district court for an order to enforce compliance with the Act. No civil remedies are specified. Willful violations of the Act are treated as misdemeanors.

Purging or Sealing

The statute does not specify either purging or sealing, but has similar provisions. When an individual is not prosecuted for, or is found innocent of, an offense for which identification information was forwarded to the central repository, that information must be returned to him. If a criminal history record shows only misdemeanor convictions and deferred prosecutions and the record subject has not had any convictions for other than traffic or game offenses for five years, there can be no public dissemination of the criminal history record. The original records, however, would be available in chronological order at the criminal justice agency maintaining them.

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NEBRASKA -- REVISED STATUTES, SECTION 29-3501, ET. SEQ.

Overview

The state police are responsible for maintaining records of arrests of felons or fugitives. Records for misdemeanors and other arrests are maintained locally. The Commission on Law Enforcement (SPA) is the regulatory authority and is authorized to develop regulations and procedures for implementing the legislation. The Commission has already issued detailed regulations and a variety of forms for use in reporting and recordkeeping. Standard definitions are utilized.

Obligations of Criminal Justice Agencies

Criminal justice agencies are required to report dispositions within 15 days, and information not reported to the state police (misdemeanors, traffic offenses, etc.) is reported to a local central repository, if one has been established, or to the arresting police department. Every criminal justice agency is required to develop procedures to minimize inaccurate information and to audit its information system. Transaction logs are required for disseminations in or out of state, though no time period for the maintenance of logs is specified. Criminal justice agencies are required to develop security procedures to protect against unauthorized access, alteration or loss of information, and there are special provisions governing the security of computerized information systems.

Record Subject Rights

Record subjects may inspect and copy their criminal history records. The Commission is required to develop procedures for challenges to the accuracy of records and for administrative appeal in the event of a disagreement between the record subject and an agency. Regulations allow appeal to the Commission from a refusal to correct records as required. The regulations include a right of appeal to the appropriate district court. It is a misdemeanor to permit unauthorized access, or to knowingly fail either to disseminate information or keep it confidential, as required by the statute. An aggrieved person may bring an action to compel compliance with the Act.

Dissemination Regulations

The statute makes criminal history records available for inspection by any person. The only limitation on public dissemination applies to notations of arrest when there has been no disposition within one year, provided the record subject is not being prosecuted and is not otherwise within the jurisdiction of the criminal justice system. Arrest notations may be disseminated only within the criminal justice system, unless the record subject is a candidate for public office or has consented to the release of such information to a specific person. The regulations do not prohibit prospective employers from inquiring into arrest records; presumably they can ask the record subject to obtain the information.

Purging or Sealing

Nebraska has no provisions for purging or sealing criminal history records.

NEVADA -- REVISED STATUTES, SECTION 179A.010, ET. SEQ.

Overview

The Nevada legislation contemplates a central state repository for criminal history records, and designates the system of criminal history records maintained by the Clark County data processing facility and supervised by the Las Vegas police as a temporary repository for Nevada criminal history records. A permanent repository

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apparently has not yet been decided upon. The Commission on Crime, Delinquency and Corrections is authorized to promulgate rules and develop procedures for the implementation of the legislation. Definitions in the statute are conventional, though "conviction" and "non-conviction" are not defined. The definition of "criminal history record" excludes, in addition to intelligence, investigative and juvenile information, posters and announcements concerning fugitives or wanted persons, original records maintained by criminal justice agencies in chronological order and not cross-indexed in any way, records concerning application for issuance of occupational licenses, all court records, records of traffic offenses, announcements by the state board of pardons or the board of parole, and records which originated in an agency other than a criminal justice agency in Nevada. Criminal history information supplied by criminal justice agencies outside the state of Nevada is not treated the same as information generated within Nevada, but is to be afforded protection provided by the originating state.

Obligations of Criminal Justice Agencies

Criminal justice agencies are not specifically obligated to maintain accurate or complete records. Any agency with a cooperative agreement with the repository of Nevada records is required to query the repository prior to any dissemination unless time is of the essence and the repository cannot respond promptly, or the information was received from the repository within the previous 30 days, or the information was generated by or is within the knowledge of personnel of the disseminating agency. Information for statistical research purposes may be disseminated without a prior check of the central repository. The statute does not impose a requirement that dispositions be reported either to a central repository or to the police department initiating the arrest. Presumably, the cooperative agreement referred to would include obligations for disposition reporting. Any criminal justice agency which disseminates criminal history records is required to maintain a transaction log for one year, and the Commission is required to adopt regulations for dissemination of corrections to anyone who received erroneous information. The Commission must also establish regulations for the security of the system of records, standards for criminal justice personnel responsible for the maintenance and dissemination of criminal histories, and for audit of criminal justice information systems.

Record Subject Rights

Every criminal justice agency is required to permit a record subject access to his criminal history, and to develop rules and procedures for challenge that require corrections within 90 days. The statute has no provisions for civil remedies on behalf of the record subject, but does provide that it shall be a misdemeanor to willfully violate the statute.

Dissemination Regulations

The Nevada law is basically an open records statute, and provides that if a criminal history record reflects only conviction information it may be disseminated without restriction. The statute does not contain restrictions on non-conviction data.

The statute provides that a criminal justice agency may disseminate conviction-only records to a prospective employer. Complete criminal histories are disseminated to the record subject or his attorney; the gaming control board; any federal or state criminal justice agency; a Nevada public utility for purposes of employment screening or "to protect the public health, safety or welfare;" in accord with any statute, court or executive order or ordinance; for research or statistical purposes pursuant to a user agreement; and "to any reporter of electronic or printed media in his professional capacity for communication to the public." The statute prohibits anyone who receives criminal history record information from further disseminating

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it, except news media personnel. Criminal justice information received from agencies outside Nevada will be accorded the confidentiality required by the disseminating state. Nevada is one of the few states to make this provision expressly, which encourages interstate exchange of information.

Purging or Sealing

The criminal history record statute has a provision which provides for the "removal" of records rather than purging or sealing. A data subject with a clean record for five years may ask that a record be "removed from the files which are available and generally searched for the purpose of responding to inquiries concerning the criminal history of a person" if the record pertains to a charge for which the record subject was acquitted, or which ended in a favorable disposition. Such non-conviction information will not be removed if there is a prior conviction for a felony or gross misdemeanor, if the disposition was a deferred prosecution or plea bargain, or if the person has had any subsequent arrests within five years. Thus, simple arrests serve to keep non-conviction information among the active records.

Nevada has a separate statute that allows a person to petition for the sealing of all records of a felony after fifteen years, of a gross misdemeanor after ten years and of a misdemeanor after five years. The court must seal the record if there are no subsequent convictions for any offense. This statute also provides that a person may petition to have his record sealed for an offense for which charges were dismissed or the accused was acquitted. The record subject may petition 30 days after the dismissal or acquittal. This statute is more favorable to the record subject than the criminal history record provision which requires five years before records can be removed from active files.

PENNSYLVANIA -- 18 PENNSYLVANIA STATUTES ANNOTATED, SECTION 9101 ET.SEQ. (PURDON)

Overview

The central repository for criminal history records in the state of Pennsylvania is operated by the state police. The attorney general has the regulatory authority with the power to establish rules and regulations, conduct audits, investigate complaints against the system, and bring action to enforce compliance with the provisions of the Act or regulations. Most definitions are standard. Expunge is defined as follows: "To remove information so that there is no trace or indication that such information existed; or to eliminate all identifiers which may be used to trace the identity of an individual, allowing remaining data to be used for statistical purposes." The statute also defines "secondary dissemination" as the subsequent transmission of any criminal history records received from a criminal justice agency. The statute does not apply to original records of entry compiled chronologically, all court records, announcements concerning fugitives or wanted persons, announcements of executive clemency, information pertaining to an individual currently within the criminal justice system or to information about juveniles unless they have been adjudicated as adults.

Obligations of Criminal Justice Agencies

The statute provides that neither the central repository nor any automated or electronic criminal justice information system shall store intelligence or investigative information, or treatment information such as medical or psychological information.

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Criminal justice agencies are required to maintain complete and accurate criminal history records, to report all dispositions to the central repository within 90 days, and to correct inaccurate data in their records within 15 days after error is detected. Transaction logs are to be maintained, but no time period is specified. The statute does not contain security requirements, but directs the attorney general to develop rules and regulations governing system security and the qualifications of personnel with responsibilities for criminal justice information. Agencies storing criminal history records are required to post public notice of the procedures for access and review.

Record Subject Rights

The record subject has the right to inspect and copy criminal history records and to challenge accuracy and completeness. Criminal justice agencies are given 60 days to review a challenge. If a challenge is considered valid, the agency must correct its own records, inform other criminal justice agencies which received inaccurate data and furnish to the record subject a copy of the transaction log showing all non-criminal justice recipients of the information. The record subject may appeal an adverse agency response to the attorney general, and further to the state courts. The aggrieved record subject may bring an action for violations of the Act for compensatory damages of not less than $100 for each violation, and for reasonable costs of litigation and attorney's fees. Punitive damages of not less than $1,000 nor more than $10,000 also can be awarded for any willful violations of the Act. Disciplinary sanctions may be applied against any employee who violates the provisions of the Act, and it is a misdemeanor to willfully violate the statute.

Dissemination Regulations

Pennsylvania's law permits the dissemination of conviction information to non-criminal justice agencies upon request. Prior to dissemination, all non-conviction data that may be part of the record must be deleted, since the statute allows this data to be disseminated only to criminal justice agencies or a "non-criminal justice agency that is providing a service for which a criminal justice agency is responsible."

The statute also imposes limitations on the use of criminal history records for employment purposes. State licensing or regulatory agencies may consider conviction information in determining whether to issue a license or certificate, but such convictions "shall not preclude the issuance" of the license or certificate. The regulatory authority must notify an individual if criminal history information has been taken into consideration in the rejection of an application for license or certification. On the other hand, the Act does provide that regulatory agencies may refuse or revoke a license or certificate if the individual concerned has been convicted of a felony or misdemeanor which "relates" to the particular trade, occupation or profession. Finally, regulatory agencies may not consider the following information when making a determination to license or certify: records of arrest without conviction, convictions annulled or expunged and records of offenses for which the subject has received an executive pardon.

Similar restrictions on use apply to private sector employers: "Convictions for felonies, as well as misdemeanor convictions and arrests for felony offenses, which relate to the applicant's suitability for employment in the position for which he has applied may be considered by the employer. Misdemeanor convictions and arrests for offenses which do not relate to the applicant's suitability for employment in the position for which he has applied shall not be considered by the employer." The question of what may "relate" to a particular employment responsibility is undoubtedly difficult, but nevertheless the employer is charged to make that determination. Since the data subject is provided with civil remedies for violations of the

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Act, and since the employer will have had to sign a user's agreement to receive the criminal history in the first place, employers probably will be discouraged form careless judgments about the relevance of a criminal record.

Purging or Sealing

The statute provides that information concerning an arrest for which there is no disposition within 18 months shall be expunged, provided that the record subject is not under active prosecution as certified by the court of appropriate jurisdiction. A record also can be expunged when the record subject reaches 70 years of age and has been free of arrest or prosecution for ten years following his final release from confinement or supervision, or the record subject has been dead for three years. The statute does not expressly place upon the record subject the burden of seeking expungement, and arguably it might be done automatically. The procedure is not clear, however, and regulations might require the record subject or someone on his behalf to initiate expungement.

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*U.S. GOVERNMENT PRINTING OFFICE: 1982-0-361-233/1811

PRIVACY AND SECURITY DOCUMENTS

Other Publications of Privacy and Security Staff

Privacy and Security of Criminal History Information: A Guide to Dissemination
(NCJ 40000)

Privacy and Security of Criminal History Information: A Guide to Record and Review
(NCJ 48125)

Privacy and Security of Criminal History Information: A Guide to Administrative Security
(NCJ 49110)

Privacy and Security of Criminal History Information: A Guide to Audit
(NCJ 59647)

Privacy and Security of Criminal History Information: A Guide to Research and Statistical Use
(NCJ 69790)

Privacy and Security of Criminal History Information: A Compendium of State Statutes
(NCJ 48981)

Privacy and Security of Criminal History Information: A Compendium of State Statutes
1979 Supplement (NCJ 59645)

Privacy and Security of Criminal History Information: An Analysis of Privacy Issues
(NCJ 69791)

Privacy and Security of Criminal History Information: A Summary of Privacy Legislation
1979 (NCJ 59646)

Privacy and Security of Criminal History Information: Users Manual
(NCJ 59644)

Privacy and Security of Criminal History Information: Privacy and the Media
(NCJ 59643)

Privacy and Security of Criminal History Information: A Summary of State Plans

Privacy and Security Planning Instructions
(NCJ 34411)

Confidentiality of Research and Statistical Data
(NCJ 47049)

Confidentiality of Research and Statistical Data: A Compendium of State Legislation
(NCJ 44787)

Computer Crime: Criminal Justice
(NCJ 61551)

Computer Crime: Criminal Justice Resource Manual
(NCJ 61550)

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